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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through
the Legislative Session of 1963

Prepared under the Supervision of the Department of Justice
of the State of North Carolina

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

W. O. Lewis, D. W. Parrish, Jr., S. G. Alrich and W. M. Willson

Volume 3D

1964 Replacement Volume

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Scope of Volume

Statutes:

Full text of Chapters 157 through 167 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1963 heretofore contained in Recompiled Volume 3C of the General Statutes of North Carolina and the 1963 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-260 (p. 132).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-316.
Federal Supplement volumes 1-216.
United States Reports volumes 1-372.
Supreme Court Reporter volumes 1-83 (p. 1559).
North Carolina Law Review volumes 1-41 (p. 662).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R.	Potter's Revisal (1821, 1827)
R. S.	Revised Statutes (1837)
R. C.	Revised Code (1854)
C. C. P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C. S.	Consolidated Statutes (1919, 1924)

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Preface

Volume 3 of the General Statutes of North Carolina of 1943 was replaced in 1952 by recompiled volumes 3A, 3B and 3C, containing Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. In 1958 a replacement volume 3B was published in which the statutes and annotations appearing in the recompiled volume 3B and in the 1957 Cumulative Supplement thereto were combined. Replacement volume 3B and recompiled volume 3C have now been replaced by replacement volumes 3B, 3C and 3D, which combine the statutes and annotations appearing in the previous volumes 3B and 3C and in the 1963 Cumulative Supplement thereto.

Volume 3A contains Chapters 106 through 116. Volume 3B contains Chapters 117 through 136. Volume 3C contains Chapters 137 through 156. Volume 3D contains Chapters 157 through 167.

In replacement volume 3D the form and the designations of subsections, subdivisions and lesser divisions of sections have in many instances been changed, so as to follow in every case the uniform system of numbering, lettering and indentation adopted by the General Statutes Commission. For example, subsections in the replacement volume are designated by lower case letters in parentheses, thus: (a). Subdivisions of both sections and subsections are designated by Arabic numerals in parentheses, thus: (1). Lesser divisions likewise follow a uniform plan. Attention is called to the fact that it has not, of course, been possible, except in replacement volumes 3B and 3C, to make corresponding changes in any references that may appear in other volumes to sections contained in volume 3D.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5.1 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

This replacement volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

THOMAS WADE BRUTON,
Attorney General.

April 1, 1964.

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ARTICLE 1.

Housing Authorities Law.

§ 157-1. Title of article.—This article may be referred to as the Housing Authorities Law. (1935, c. 456, s. 1.)

Editor's Note.—For comment on this article, see 19 N. C. Law Rev. 484.

Constitutionality.—A housing authority created under this article is not invested with legislative and supreme judicial powers, and therefore its creation does not violate the constitutional provision that these powers be and remain separate and distinct. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Slum Clearance Held Public Purpose.—"Slum clearance" to rehabilitate crowded and congested areas in cities and towns where conditions conducive to disease and public disorder exist, is a public purpose, for which the legislature may create municipal corporations, and housing authorities established under this and the following sections, are for such governmental purpose. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938); In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Article Relates to Health and Sanitation.—This article, authorizing the creation of municipal housing authorities, is a statute relating to health and sanitation. State v. Alverson, 254 N. C. 204, 118 S. E. (2d) 408 (1961).

Property Exempt from Taxation.—This article is a constitutional exercise of a legislative power and the agency therein set up is a municipal corporation within the meaning of the provisions of the Constitution. It follows as a corollary to this that the property of the housing authority is exempt from State, county, and municipal taxation. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

Applied in Housing Authority of Wilson v. Wooten, 257 N. C. 358, 126 S. E. (2d) 101 (1962).

Cited in In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952); State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 157-2. Finding and declaration of necessity.—It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

Editor's Note.—Prior to the 1941 amendment, this section applied to cities and towns of more than five thousand inhabitants.

Chapter 1081 of Session Laws 1949, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 481.

Legislative Purpose.—The legislature authorized the creation of housing authorities as a means of protecting low-income citizens from unsafe or unsanitary conditions in urban or rural areas. Powell v. Eastern Carolina Regional Housing Authority, 251 N. C. 812, 112 S. E. (2d) 386 (1960).

Stated in State v. Alverson, 254 N. C. 204, 118 S. E. (2d) 408 (1961).

Cited in Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

§ **157-3. Definitions.**—The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Bonds" shall mean any bonds, interim certificates, notes, debentures, obligations, or other evidences of indebtedness issued pursuant to this article.

(3) "City" shall mean any city or town having a population of more than five hundred (500) inhabitants according to the last federal census or any revision or amendment thereto.

(4) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(5) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(6) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodation.

(7) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(8) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(9) "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority:

  a. live under unsafe or unsanitary housing conditions;

  b. derive their principal income from operating or working upon a farm; and

  c. had an aggregate average annual net income for the three years preceding their admission that was less than the amount that shall be determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding.

(10) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(11) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(12) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking

a. to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or

b. to provide safe and sanitary dwelling accommodations for persons of low income.

The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(13) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Municipality" shall mean any city, town, incorporated village or other municipality in the State.

(15) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(16) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(17) "State" shall mean the State of North Carolina.

(18) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof. (1935, c. 456, s. 3; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2; 1943, c. 636, s. 1; 1959, cc. 321, 641, 1281; 1961, c. 200, s. 1.)

Editor's Note.—The 1938 amendment made a substitution in subdivision (3). The 1941 amendment added subdivision (9). The 1943 amendment made changes in subdivisions (2) and (14).

Chapter 1081 of Session Laws 1949, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

The 1959 and 1961 amendments rewrote subdivision (3).

A housing authority created hereunder is a municipal corporation created for a public governmental purpose, and such authority is invested with a governmental function. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Quoted in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-4. Notice, hearing and creation of authority; cancellation of certificate of incorporation.—Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;
(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;
(3) The term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority. (1935, c. 456, s. 4; 1943, c. 636, s. 7; 1961, c. 987.)

Editor's Note.—The 1943 amendment struck out the former paragraph of this section relating to boundaries of housing authorities. See note under § 157-39.1.

The 1961 amendment added the last paragraph.

Determination of Existence of Facts Justifying Creation of Authority.—The provision of this section investing municipal corporations with the power to determine each for itself the existence or nonexistence of facts necessary for the creation of a housing authority to perform a proper municipal governmental function within its limits is not an unconstitutional delegation of legislative authority. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

The existence of nonexistence of facts within its corporate limits justifying the creation of a housing authority for the determination of the municipal corporation, which duty is political and not judicial, and in proceedings to enjoin the activities of a housing authority created under the statute the court does not have authority to hear evidence in regard to the existence of the facts upon which the creation of the housing authority is predicated. Whether an appeal will lie from the municipal corporation to review such findings, quaere. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Publication of Notice.—Under this section publication of notice is not required for the creation of a rural housing authority, and a rural housing authority duly created thereunder is a municipal corporation created for a public purpose and realty acquired by such authority is exempt from taxation. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

§ **157-5. Appointment, qualifications and tenure of commissioners.**—An authority shall consist of five commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official.

The commissioners who are first appointed shall be designated by the mayor to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. Three commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5.)

Local Modification.—City of Wilson: 1953, c. 664.

§ **157-6. Duty of authority and commissioners.**—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1935, c. 456, s. 6.)

§ **157-7. Interested commissioners or employees.**—No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1935, c. 456, s. 7.)

§ 157-8. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such willful violation.

A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1935, c. 456, s. 8.)

§ 157-9. Powers of authority.—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150.)

Editor's Note.—The 1939 amendment added the last paragraph.

Authorities created pursuant to §§ 157-2, 157-4, 157-33, and 157-35 are public bodies exercising public powers. Hence, they are sometimes called municipal corporations. Powell v. Eastern Carolina Regional Housing Authority, 251 N. C. 812, 112 S. E. (2d) 386 (1960).

Not Delegation of Legislative Function.—The fact that an administrative board or municipal corporation is authorized to investigate and determine the existence or nonexistence of facts upon which depend the application of the law it is charged with administering is not a delegation of legislative functions. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

§ 157-10. Co-operation of authorities.—Any two or more authorities may join or co-operate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project or projects located within the boundaries of any one or more of said authorities. For such purpose an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or co-operating with it, to act on behalf with respect to any or all of such powers. Any authorities joining or co-operating with one another may by resolutions appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities. (1935, c. 456, s. 10; 1943, c. 636, s. 2.)

Editor's Note.—The 1943 amendment rewrote this section. See note under § 157-39.1.

§ 157-11. Eminent domain.—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(1) Sections 40-11 to 40-29, both inclusive;

(2) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1935, c. 456, s. 11.)

Adoption of Proper Resolution Prerequisite to Exercise of Eminent Domain.—See In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Discretion of Authority in Selection of Site.—See note to § 157-50.

§ 157-12. Acquisition of land for government.—The authority may acquire by purchase or by the exercise of its power of eminent domain, as aforesaid, any property real or personal for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project. (1935, c. 456, s. 12.)

§ **157-13. Zoning and building laws.**—All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. (1935, c. 456, s. 13.)

§ **157-14. Types of bonds authority may issue.**—An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes. An authority shall also have power to issue or exchange refunding bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be:

(1) Exclusively the income and revenues of the housing project financed in whole or in part with the proceeds of such bonds;

(2) Exclusively the income and revenues of certain designated housing projects, whether or not they are financed in whole or in part with the proceeds of such bonds; or

(3) The income and revenues of the authority generally.

Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state in their face) shall not be a debt of any city or municipality and neither the State nor any such city or municipality shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the State. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute.

This article without reference to other statutes of the State shall constitute full and complete authority for the authorization, issuance, delivery and sale of bonds hereunder and such authorization, issuance, delivery and sale shall not be subject to any conditions, restrictions or limitations imposed by any other law whether general, special or local. (1935, c. 456, s. 14; 1939, c. 150, s. 2.)

Editor's Note.—The 1939 amendment rewrote this section.

A city or town is not liable on the bonds of a housing authority within its territory, it being expressly provided that neither the State nor the city or town shall be liable, and the authority not being an agency of the city or town so as to contravene this express statutory provision. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ **157-15. Form and sale of bonds.**—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable semiannually, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York or in the city of Chicago, Illinois; provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1935, c. 456, s. 15.)

§ 157-16. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract, all or any part of its rents, fees, or revenues.

(2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(7) To covenant as to what other, or additional debt, may be incurred by it.

(8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(9) To provide for the replacement of lost, destroyed or mutilated bonds.

(10) To covenant that the authority warrants the title to the premises.

(11) To covenant as to the rents and fees to be charged, the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues and as to the use and disposition to be made thereof.

(12) To covenant as to the use of any or all of its property, real or personal.

(13) To create or to authorize the creation of special funds in which there shall be segregated

- a. The proceeds of any loan and/or grant;
- b. All of the rents, fees and revenues of any housing project or projects or parts thereof;
- c. Any monies held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;
- d. Any monies held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and
- e. Any monies held for any other reserves or contingencies; and to covenant as to the use and disposal of the monies held in such funds.

(14) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(15) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(16) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(17) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance monies.

(18) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the monies so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(19) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(20) To covenant as to the right, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(21) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right without judicial proceedings to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the monies collected in accordance with the agreement of the authority with such obligee.

(22) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(23) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.

(24) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in § 157-17. (1935, c. 456, s. 16.)

§ 157-17. Power to mortgage when project financed with governmental aid.—In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(1) To vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, so long as a government shall be the holder of any of the bonds secured by such mortgage.

(2) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved.

(3) To vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved.

(4) To vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee (in its absolute discretion) shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid. (1935, c. 456, s. 17.)

§ 157-18. Remedies of an obligee of authority.—An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every

term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.

(2) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(3) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority. (1935, c. 456, s. 18.)

§ **157-19. Additional remedies conferrable by mortgage or trust indenture.**—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an "event of default" as defined in such instrument:

(1) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(2) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1935, c. 456, s. 19.)

§ **157-20. Remedies cumulative.**—All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1935, c. 456, s. 20.)

§ **157-21. Limitations on remedies of obligee.**—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in § 157-17. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in § 157-17, and in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issue on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority, which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree. (1935, c. 456, s. 21.)

§ **157-22. Title obtained at foreclosure sale subject to agreement with government.**—Notwithstanding anything in this article to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority whether pursuant to any foreclosure of a mortgage, pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon. (1935, c. 456, s. 22.)

§ 157-23. Contracts with federal government.—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

§ 157-24. Security for funds deposited by authorities.—The authority may by resolution provide that

(1) All moneys deposited by it shall be secured by obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or

(2) By any securities in which savings banks may legally invest funds within their control or

(3) By an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits. (1935, c. 456, s. 24.)

§ 157-25. Housing bonds, legal investments and security.—The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State; it being the purpose of this article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State: Provided, however, that nothing contained in this article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3.)

Editor's Note.—The 1941 amendment rewrote this section.

§ 157-26. Tax exemptions.—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority heretofore or hereafter issued are declared to be issued for a public purpose and to be public instrumentalities and, together with the interest thereon, shall be exempt from taxes. (1935, c. 456, s. 26; 1953, c. 907.)

Editor's Note.—The 1953 amendment rewrote the third sentence.

For brief comment on the 1953 amendment, see 31 N. C. Law Rev. 442.

Since a housing authority created under § 157-1 and the following section, is a municipal corporation created for a public, governmental purpose, its property is exempt from the State, county and municipal taxation. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ **157-27. Reports.**—The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1935, c. 456, s. 27.)

§ **157-28. Restriction on right of eminent domain; right of appeal preserved; investigation by Utilities Commission.**—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 456, s. 28.)

Cited in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ **157-29. Rentals and tenant selection.**—It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(2) It may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(4) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section. (1939, c. 150.)

Preference of Landowners Conveying Property.—An agreement of a rural housing authority giving priority in occupancy of its dwelling units to those landowners, or the tenants, sharecroppers or farm wage hands of such landowners, who convey property to the authority, provided that they come within the definition of families of low income is not unlawful discrimination in favor of such class. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

§ 157-30. Creation and establishment validated.—The creation and establishment of housing authorities under the provisions of chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended by chapter two, Public Laws of one thousand nine hundred and thirty-eight, Extra Session, and as further amended by chapter one hundred and fifty, Public Laws of one thousand nine hundred and thirty-nine, and any additional amendments thereto, known as the Housing Authorities Law [§ 157-1 et seq.], together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 1; 1941, c. 62, s. 1.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note.—For comment on the 1941 Act, see 19 N. C. Law Rev. 484.

§ 157-31. Contracts, agreements, etc., validated.—All contracts, agreements, obligations and undertakings of such housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions contracts and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to co-operation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 2; 1941, c. 62, s. 2.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note.—The 1941 amendment re-enacted this section without change.

§ **157-32. Proceedings for issuance, etc., of bonds and notes validated.**—All proceedings, acts and things heretofore undertaken, performed or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved and declared legal in all respects, notwithstanding any want of statutory authority or any defect or irregularity therein. (1939, c. 118, s. 3; 1941, c. 62, s. 3.)

Cross Reference.—See Editor's Note under § 157-32.1.

Editor's Note.—The 1941 amendment substituted "of" for "or" in the phrase "want of statutory authority" near the end of the section.

§ **157-32.1. Other validation of creation, etc.**—The creation, establishment and organization of housing authorities under the provisions of the Housing Authorities Law (chapter four hundred and fifty-six, Public Laws of one thousand nine hundred and thirty-five, as amended, codified as § 157-1 et seq.), together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 1.)

Editor's Note.—This section and §§ 157-32.2 and 157-32.3, validating housing authorities created under § 157-1 et seq., together with certain acts done in connection therewith, are similar to §§ 157-30 through 157-32. The words "notwithstanding any want of statutory authority or any defect or irregularity therein," appearing at the end of §§ 157-30 through 157-32, do not appear in the other sections and they differ slightly in other particulars.

§ **157-32.2. Other validation of contracts, agreements, etc.**—All contracts, agreements and undertakings of such housing authorities heretofore entered into relating to financing, or aiding in the development or operation of any housing projects, including (without limiting the generality of the foregoing) loan and annual contributions contracts, agency contracts and leases, agreements with municipalities or other public bodies (including those which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by such housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to co-operation in aid of housing projects, payments to public bodies in the State, furnishing of municipal services and facilities and the elimination of unsafe and insanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts and things heretofore undertaken or done with reference thereto, are hereby validated and declared legal in all respects. (1943, c. 89, s. 2.)

Cross Reference.—See Editor's Note under § 157-32.1.

§ **157-32.3. Other validation of bonds and notes.**—All proceedings, acts and things heretofore undertaken or done in or for the authorization, issuance, execution and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated and declared legal in all respects. (1943, c. 89, s. 3.)

Cross Reference.—See Editor's Note under § 157-32.1.

§ 157-33. Notice, hearing and creation of authority for a county.—Any twenty-five (25) residents of a county having a population of more than sixty thousand (60,000) may file a petition with the clerk of the board of county commissioners setting forth that there is a need for an authority to function in the county. Upon the filing of such a petition such clerk shall give notice of the time, place and purposes of a public hearing at which the board of county commissioners will determine the need for an authority in the county. Such notice shall be given at the county's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing to be held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons. After such a hearing, the board of county commissioners shall determine (i) whether insanitary or unsafe inhabited dwelling accommodations exist in the county and/or (ii) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof. In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of the land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital)

(1) that a notice has been given and public hearing has been held as aforesaid, that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners;
(2) the name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;
(3) the term of office of each of the commissioners;
(4) the name which is proposed for the corporation; and
(5) the location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 7.)

Editor's Note.—The 1943 amendment struck out the former paragraph relating to the area of operation of housing authorities. See note under § 157-39.1.

§ **157-34. Commissioners and powers of authority for a county.**—The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a housing authority created for a county shall not be subject to the limitations provided in subdivision (4) of § 157-29 of the housing authorities law with respect to housing projects for farmers of low income. (1941, c. 78, s. 4.)

§ **157-35. Creation of regional housing authority.**—If the board of county commissioners of each of two or more contiguous counties having an aggregate population of more than sixty thousand (60,000) by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority for all of such counties shall (after the commissioners thereof file an application with the Secretary of State as hereinafter provided) thereupon exist for and exercise its powers and other functions in such counties; and thereupon any housing authority created for any of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, that the board of county commissioners shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided:

Provided, further, that when the above conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of two or more said contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such board of county commissioners finds (and only if it finds)

(1) Insanitary or unsafe dwelling accommodations exist in the area of its respective county and/or there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof and

(2) That a regional housing authority for the proposed region would be a more efficient or economical administrative unit than a housing authority for an area having a smaller population to carry out the purposes of the Housing Authorities Law and any amendments thereto, in such county.

In determining whether dwelling accommodations are unsafe or insanitary, the board of county commissioners shall take into consideration the following: The physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that both (1) and (2) of the above enumerated conditions exist, the board of county commissioners shall adopt a resolution so finding (which need not go into any detail other than the mere finding). After the appointment, as hereinafter provided, of the commissioners to act as the regional housing authority, said authority shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital)

(1) That the boards of county commissioners made the aforesaid determination and that they have been appointed as commissioners;

(2) The name, and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this act;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners, a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1941, c. 78, s. 4; 1943, c. 636, ss. 3, 7.)

Editor's Note.—The 1943 amendment inserted the words in parentheses in the first paragraph and added that part of the paragraph appearing after the word "outstanding" in the first proviso. The amendment also struck out the former paragraph relating to the area of operation of housing authorities. See note under § 157-39.1.

§ 157-36. Commissioners of regional housing authority.—The board of county commissioners of each county included in regional housing authority shall appoint one person as a commissioner of such authority, and each such commissioner to be first appointed by the board of county commissioners of a county may be appointed at or after the time of the adoption of the resolution declaring the need for such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided in this article, the board of county commissioners of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The board of county commissioners of each county shall appoint the successor of the commissioner appointed by it. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the board of county commissioners of such county shall be thereupon abolished. A certificate of the appointment of any such commissioner signed by the chairman of the board of county commissioners (or the appointing officer) shall be conclusive evidence of the due and proper appointment of such commissioner. If the area of operation of a regional housing authority consists at any time of an even number of counties, the Governor of North Carolina shall appoint one additional commissioner to such regional housing authority whose term of office shall be as herein provided for a commissioner of a regional housing authority, except that such term shall end at any earlier time that the area of operation of the regional housing authority shall be changed to consist of an odd number of counties. The Governor shall likewise appoint each person to succeed such additional commissioner. A certificate of the appointment of any such additional commissioner shall be signed by the Governor and filed with the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be conclusive evidence of the due and proper appointment of such additional commissioner. The commissioners of a regional housing authority shall be appointed for terms of five years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified.

For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the board of county commissioners appointing him, or in the case of the commissioner appointed by the Governor, by the Governor: Provided, that such commissioner shall have been given a copy of the charges against him at least ten days prior to the hearing thereon and: Provided, that such commissioner shall have had an opportunity to be heard in person or by counsel.

The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. (1941, c. 78, s. 4; 1943, c. 636, s. 4.)

Editor's Note.—The 1943 amendment inserted the first six sentences of the first paragraph in place of the first four sentences as formerly appearing. See note under § 157-39.1.

§ 157-37. Powers of regional housing authority.—Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities: Provided, that for such purposes the term "mayor" or "council" as used in the Housing Authorities Law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "clerk of the board of county commissioners" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context: Provided, further, that a regional housing authority shall not be subject to the limitations provided in subdivision (4) of § 157-29 of the Housing Authorities Law with respect to housing projects for farmers of low income. Except as otherwise provided in this article, all the provisions of law applicable to housing authorities created for counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof. (1941, c. 78, s. 4; 1943, c. 636, s. 6.)

Editor's Note.—The 1943 amendment added the last sentence. See note under § 157-39.1.

§ 157-38. Rural housing projects.—Housing authorities created for counties and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such lease or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this article. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. (1941, c. 78, s. 4.)

§ 157-39. Housing applications by farmers.—The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. (1941, c. 78, s. 4.)

§ 157-39.1. Area of operation of city, county and regional housing authorities.—The boundaries or area of operation of a housing authority created for a city shall include said city and the area within ten miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city, except as otherwise provided herein. The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in this article) all of the counties for which such regional housing authority is created and established: Provided, that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its power within such city: Provided, that the jurisdiction of any rural housing authority to which the Secretary of State has heretofore issued a certificate of incorporation shall extend to within a distance of one mile of the town or city limits of any town or city having a population in excess of five hundred, located in any county now or hereafter constituting a part of the territory of such rural housing authority: Provided, further, that this provision shall not affect the jurisdiction of any city housing authority to which the Secretary of State has heretofore issued a certificate of incorporation. (1943, c. 636, s. 5; 1961, c. 200, s. 2.)

Editor's Note.—The act inserting this section also inserted §§ 157-39.2 through 157-39.8, inclusive, and amended §§ 157-3, 157-4, 157-10, 157-33, 157-35, 157-36 and 157-37. Section 9 of the amendatory act provided: "The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Nothing contained in this act shall affect the term of office of any commissioner of a housing authority heretofore appointed under the housing authorities law. The enactment of this act shall not be construed to render invalid any action or proceeding had or taken for the creation or establishment of a housing authority pursuant to laws in existence prior to the enactment of this act."

The 1961 amendment substituted "five hundred" for "five thousand" in the second proviso.

§ 157-39.2. Increasing area of operation of regional housing authority.—The area of operation or boundaries of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within a regional housing authority if the board of county commissioners of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties each adopts a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, any county housing authority created for any such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided: Provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority as the obligor thereon; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, bonds, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided: Provided, further, that when the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, bonds, and property, real and personal, of such county housing authority shall be in the name of and vested in such regional housing authority, all contracts and bonds of such county housing authority shall be the contracts and bonds of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds: Provided, that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The board of county commissioners of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties shall by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if

(1) The board of county commissioners of each such additional county or counties find that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford, and

(2) The board of county commissioners of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the board of county commissioners of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties. (1943, c. 636, s. 5.)

§ 157-39.3. Decreasing area of operation of regional housing authority.— The area of operation or boundaries of a regional housing authority shall be decreased from time to time to exclude one or more counties from such area if the board of county commissioners of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area: Provided, that no action may be taken pursuant to this section if the regional housing authority has outstanding any bonds or notes, unless first all holders of such bonds or notes consent in writing to such action: Provided, further, that if such action decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county, in the same manner as though such authority were created, and constituted a public and corporate body for such county pursuant to other provisions of this Housing Authority Law, and the commissioners of such authority shall be thereupon appointed as provided for the appointment of commissioners of a housing authority created for a county.

The board of county commissioners of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority shall adopt a resolution declaring that there is a need for excluding a county or counties from such area only if:

(1) Each such board of county commissioners of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that (because of facts arising or determined subsequent to the time when such area first included the

county or counties to be excluded) the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area, and

(2) The board of county commissioners of each county or counties to be excluded and the commissioners of the regional housing authority each also find that (because of the aforesaid changed facts) another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties.

Nothing contained herein shall be construed as preventing a county or counties excluded from the area of operation of a regional housing authority, as provided above, from thereafter being included within the area of operation of any housing authority in accordance with this article.

Any property held by a regional housing authority within a county or counties excluded from the area of operation of such authority as herein provided, shall (as soon as practicable after the exclusion of said county or counties, respectively) be disposed of by such authority in the public interest. (1943, c. 636, s. 5.)

§ **157-39.4. Requirements of public hearings.**—The board of county commissioners of a county shall not adopt any resolution authorized by §§ 157-35, 157-39.2 or 157-39.3 unless a public hearing has first been held which shall conform (except as otherwise provided herein) to the requirements of this Housing Authorities Law for hearings to determine the need for a housing authority of a county: Provided, that such hearings may be held by the board of county commissioners without a petition therefor.

In connection with the issuance of bonds, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase or decrease of its area of operation. (1943, c. 636, s. 5.)

§ **157-39.5. Consolidated housing authority.**—If the governing body of each of two or more municipalities (with a population of less than five hundred, but having an aggregate population of more than five thousand) by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein; and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority: Provided, that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of this Housing Authorities Law as are applicable to the creation of a regional housing authority and that all of the provisions of this Housing Authorities Law applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof: Provided, further that the area of operation or boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in this article for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties: Provided, further, that for all such purposes the term "board of county commissioners" shall be construed as meaning "governing body" except in § 157-36, where it shall be construed as meaning "mayor" or other executive head of the municipality, the term "county" shall be construed as meaning "municipality", the term "clerk" shall be construed as meaning "clerk of the municipality or officer with similar duties," the term "region" shall be construed as meaning "area of operation of the consolidated housing authority" and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of any such municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required by § 157-4 for the creation of a housing authority for a city: Provided, that after notice given by the clerk (or officer with similar duties) of the municipality, the governing body of the municipality may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (1943, c. 636, s. 5; 1961, c. 200, s. 3.)

Editor's Note.—The 1961 amendment substituted "five hundred" for "five thousand" near the beginning of the section.

§ 157-39.6. Findings required for authority to operate in municipality.—No governing body of a city or other municipality shall adopt a resolution as provided in § 157-39.1 declaring that there is a need for a housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (i) that insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (ii) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality: Provided, that such findings shall not have the effect of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk (or the officer with similar duties) of the city or other municipality shall give notice of the public hearing and such hearing shall be held in the manner provided in § 157-4 for a public hearing by a council to determine the need for a housing authority in the city.

During the time that, pursuant to these findings, a housing authority has outstanding (or is under contract to issue) any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation. (1943, c. 636, s. 5.)

§ 157-39.7. Meetings and residence of commissioners.—Nothing contained in this Housing Authorities Law shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this Housing Authorities Law. (1943, c. 636, s. 5.)

§ 157-39.8. Agreement to sell as security for obligations to federal government.—In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by said housing authority, any such housing authority is authorized to make such covenants (including covenants with holders of bonds issued by such authority for purposes of the project involved), and to confer upon the federal government such rights and remedies, as said housing authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken. In any such contract, the housing authority may, notwithstanding any other provisions of law, agree to sell and convey the project (including all lands appertaining thereto) to which such contract relates to the federal government upon the occurrence of such conditions, or upon such defaults on bonds for which any of the annual contributions provided in said contract are pledged, as may be prescribed in such contract, and at a price (which may include the assumption by the federal government of the payment, when due, of the principal of and interest on outstanding bonds of the housing authority issued for purposes of the project involved) determined as prescribed therein and upon such other terms and conditions as are therein provided. Any such housing authority is hereby authorized to enter into such supplementary contracts, and to execute such conveyances, as may be necessary to carry out the provisions hereof. Notwithstanding any other provisions of law, any contracts or supplementary contracts or conveyances made or executed pursuant to the provisions of this section shall not be or constitute a mortgage within the meaning or for the purposes of any of the laws of this State. (1943, c. 636, s. 5.)

ARTICLE 2.

Municipal Co-operation and Aid.

§ 157-40. Finding and declaration of necessity.—It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State, and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 408, s. 1.)

Editor's Note.—For an analysis of this article, see 13 N. C. Law Rev. 379.

The housing authority of the city of Charlotte, acting in co-operation with the city of Charlotte, is subject to the provisions set forth in this section and subsequent sections in the Housing Authorities Law In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-41. Definitions.—The following terms, whenever used or referred to in this article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "City" shall mean any city or town of the State having a population of more than five hundred (500) inhabitants according to the last federal census or any revision or amendment thereto.

(2) "Housing authority" shall mean any housing authority organized pursuant to the Housing Authorities Law of this State.

(3) "Housing project" shall mean any undertaking (i) to demolish, clear, remove, alter or repair unsafe or insanitary housing, and/or (ii) to provide dwelling accommodations for persons of low income, and said term

may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

(4) "Municipality" shall mean any city, town or incorporated village of the State. (1935, c. 408, s. 2; 1961, c. 200, s. 4.)

Editor's Note.—The 1961 amendment rewrote subdivision (1)

Quoted in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ 157-42. Conveyance, lease or agreement in aid of housing project.—For the purpose of aiding and co-operating in the planning, construction and operation of housing projects located within their respective territorial boundaries, the State, its subdivisions and agencies, and any county, city or municipality of the State may, upon such terms, with or without considerations as it may determine:

(1) Dedicate, release, sell, convey, or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a housing authority or the United States of America or any agency thereof;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone, or rezone; make exceptions from building regulations and ordinances; any city or town also may change its map;

(5) Cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish;

(6) Enter into agreements with respect to the exercise by it of its powers relating to the repair, closing or demolition of unsafe, insanitary or unfit dwellings;

(7) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority respecting action to be taken pursuant to any of the powers granted by this article. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by the State, a city, county, municipality, subdivision or agency of the State without appraisal, public notice, advertisement or public bidding.

(8) With respect to any housing project which a housing authority has acquired or taken over from the United States of America or any agency thereof and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no city or county shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. (1935, c. 408, s. 3; 1939, c. 137.)

Cross Reference.—As to the authority of municipalities in the repair, closing and demolition of unfit dwellings, see § 160-182 et seq.

Editor's Note.—The 1939 amendment rewrote this section.

§ 157-43. Advances and donations by the city and municipality.—The council or other governing body of the city included within the territorial boundaries of such authority is authorized to make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of such housing authority, and to appropriate such amount to the authority out of any moneys in the city treasury not appropriated to some other purposes, and to cause the moneys so appropriated to be paid the authority as a donation, and moneys so appropriated and paid to a housing authority by a city shall be deemed to be a necessary expense of such city. In addition thereto, the city and any municipality located in whole or in part within the boundaries of a housing authority shall have the power annually and from time to time to make donations or advances to the authority of such sums as the city or municipality in its discretion may determine. The authority, when it has money available therefor, shall reimburse the city or municipality for all advances by way of loan made to it. (1935, c. 408, s. 5.)

§ **157-44. Action of city or municipality by resolution.**—Except as otherwise provided in this article or by the Constitution of the State, all action authorized to be taken under this article by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted. (1935, c. 408, s. 5.)

§ **157-45. Restrictions on exercise of right of eminent domain; duties of Utilities Commission; investigation of projects.**—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of public convenience and necessity for said project. (1935, c. 408, s. 6.)

Cross Reference.—As to proceedings before the Utilities Commission and appeal therefrom, see §§ 62-60 to 62-81.

Cited in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ **157-46. Purpose of article.**—It is the purpose and intent of this article that the State, its subdivisions and agencies, and any county, city or municipality of the State shall be authorized, and are hereby authorized, to do any and all things necessary to aid and co-operate in the planning, construction and operation of housing projects by the United States of America and by housing authorities. (1935, c. 408, s. 7.)

§ **157-47. Supplemental nature of article.**—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1935, c. 408, s. 8.)

ARTICLE 3.

Eminent Domain.

§ **157-48. Finding and declaration of necessity.**—It is hereby declared that insanitary or unsafe dwelling accommodations exist in various areas of the State and that consequently many persons of low income are forced to reside in such dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which private property may be acquired; that it is in the public interest that work on such projects be instituted as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provision hereinafter enacted, is hereby declared as a matter of legislative determination. (1935, c. 409, s. 1.)

Cited in In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

§ **157-49. Housing project.**—The term "housing project" whenever used in this article shall mean any undertaking (i) to demolish, clear, remove, alter or repair unsafe or insanitary housing and/or (ii) to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities as are designed primarily for the benefit and use of the occupants of such dwelling accommodations. (1935, c. 409, s. 2.)

§ **157-50. Eminent domain for housing projects.**—Any corporation, which is an agency of the United States of America, shall have the right to acquire by eminent domain any real property, including improvements and fixtures thereon, which it may deem necessary for a housing project being constructed, operated or aided by it or the United States of America. Any corporation borrowing money or receiving other financial assistance from the United States of America or any agency thereof for the purpose of financing the construction or operation of any housing project or projects, the operation of which will be subject to public supervision or regulation, shall have the right to acquire by eminent domain any real property, including fixtures and improvements thereon, which it may deem necessary for such project. A housing project shall be deemed to be subject to public supervision or regulation within the meaning of this article if the rents to be charged by it are in any way subject to the supervision, regulation or approval of the United States of America, the State or any of their subdivisions or agencies, or by a housing authority, city, municipality or county, whether such right to supervise, regulate or approve be by virtue of any law, statute, contract or otherwise.

Any such corporate agency of the United States of America or any such corporation, upon the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, may exercise the power of eminent domain pursuant to the provisions of either:

(1) Sections 40-11 to 40-29, both inclusive;

(2) Any other applicable statutory provisions, now in force or hereafter enacted for the exercise of the power of eminent domain. (1935, c. 409, s. 3.)

Discretion of Housing Authority in Selection of Site.—In determining what property is necessary for a public housing site, a broad discretion is vested by statute in housing authority commissioners, to whom the power of eminent domain is delegated. In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952); Housing Authority of Wilson v. Wooten, 257 N. C. 358, 126 S. E. (2d) 101 (1962).

In the selection of a location for a housing project as authorized under the Housing Authorities Law, the project may be built either in a slum area which has been cleared, or upon other suitable site. The housing authority is given wide discretion in the selection and location of a site for such project. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

So extensive is this discretionary power of housing commissioners that ordinarily the selection of a project site may become an issuable question, determinable by the court, on nothing short of allegations charging arbitrary or capricious conduct amounting to abuse of discretion. However, allegations charging malice, fraud, or bad faith in the selection of a housing project site are not essential to confer the right of judicial review. It suffices to allege and show abuse of discretion. In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

The fact that a few isolated properties in an area may be taken and dismantled which are above the standard of slum properties, or that some few desirable homes will be taken, will not affect the public character of the condemnation proceeding. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Testimony tending to show that other sites were available and suitable for the housing project is relevant and admissible as bearing directly on the question of whether the housing commissioners acted arbitrarily or capriciously in attempting to appropriate the proposed site. In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

Evidence Showing Arbitrary and Capricious Actions in Selecting Site.—See In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

§ 157-51. Certificate of convenience and necessity required; right of appeal; investigation of projects.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall be as now provided by law and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1935, c. 409, s. 4.)

Cross Reference.—As to proceedings before the Utilities Commission and appeal therefrom, see §§ 62-60 to 62-81.

The public need for a public project in a particular community must be made to appear and a certificate of public convenience and necessity must be obtained before the petitioner may proceed to condemn property for such a project. However, it was not the legislative intent to require a petitioner to select and describe in detail the land it might need for the construction of a proposed project before it ascertained whether or not it would be permitted to proceed with the project. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

The North Carolina Utilities Commission has only one question to consider and determine in connection with an application of a housing authority for a certificate of public convenience and necessity, and that is whether the area within the jurisdiction of the particular housing authority is eligible for the construction of the low-rent dwellings proposed, within the purview of the Housing Authorities Law. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

The statute does not provide for the North Carolina Utilities Commission to select or approve the selection of the site for a housing project. On the contrary, the selection of a site for such project is vested in the housing authority. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Description of Property and Notice to Owners Not Necessary.—The application of a housing authority for a certificate of public convenience and necessity need not contain a description of the property upon which the project is to be located, nor is notice to the owners of such property of the filing of an application for such certificate required. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Certificate Does Not Confer Any Interest in Property.—The issuance of a certificate of public convenience and necessity for the construction of low-rent dwellings does not give a local housing authority any right, title or interest in real estate, even though the property may be described in the petition for the certificate of public convenience and necessity. In re Housing Authority, 233 N. C. 649, 65 S. E. (2d) 761 (1951).

Article 4.

National Defense Housing Projects.

§ 157-52. Purpose of article.—It is hereby found and declared that the National Defense Program involves large increases in the military forces and personnel in this State, a great increase in the number of workers in already established manufacturing centers and the bringing of a large number of workers and their families to new centers of defense industries in the State; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this State which impedes the National Defense Program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons to enable the rapid expansion of national defense activities in this State and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities which otherwise would not be provided at this time, and that such provisions are for the public use and purpose of facilitating the National Defense Program in this State. It is further declared to be the purpose of this article to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the federal government, or to co-operate with or act as agent of the federal government, in the expeditious development and the administration of projects to assure the availability when needed of safe and sanitary dwellings for persons engaged in national defense activities. (1941, c. 63, s. 1.)

§ **157-53. Definitions.**—(a) "Administration," as used in this article, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the federal government.

(b) "Development" as used in this article, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the federal government.

(c) "Federal government," as used in this article, shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(d) "Housing authority," as used in this article, shall mean any housing authority established or hereafter established pursuant to article one of this chapter.

(e) The development of a project shall be deemed to be "initiated," within the meaning of this article, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the federal government with respect to the exercise of powers hereunder in the development of such project of the federal government for which an allocation of funds has been made prior to the termination of the present war.

(f) "Persons engaged in national defense activities," as used in this article shall include: Enlisted men in the military and naval services of the United States and employees of the War and Navy Departments assigned to duty at military or naval reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them.

(g) "Persons of low income," as used in this article, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(h) "State public body," as used in this article, shall include the State, its subdivisions and agencies, and any county, city, town or incorporated village of the State. (1941, c. 63, s. 8; 1943, c. 90, s. 2.)

Editor's Note.—The 1943 amendment struck out "December thirty-first, one thousand nine hundred and forty-three" formerly appearing at the end of subsection (e) and inserted in lieu thereof "the termination of the present war."

§ **157-54. Rights, powers, etc., of housing authorities relative to national defense projects.**—Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing authority shall initiate the development of any such project pursuant to this article after the termination of the present war.

In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this article, and housing projects developed or administered hereunder shall constitute "housing projects" under article one of this chapter, as that term is used therein: Provided, that during the period (herein called the "national defense period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its authorized area of operation, or any part thereof, there is an acute shortage of safe and sanitary dwellings which impedes the National Defense Program in this State and that the necessary safe and sanitary dwellings would not otherwise be provided when needed for persons engaged in national defense activities, any project developed or administered by such housing authority (or by any housing authority co-operating with it) in such area pursuant to this article, with the financial aid of the federal government (or as agent for the federal government as hereinafter provided), shall not be subject to the limitations provided in § 157-29; and provided further, that, during the national defense period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvements furnished for or in connection with any such projects. After the national defense period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of article one of this chapter. (1941, c. 63, s. 2; 1943, c. 90, s. 1.)

Editor's Note.—The 1943 amendment struck out "December thirty-first, one thousand nine hundred and forty-three" formerly appearing at the end of the first paragraph and inserted in lieu thereof "the termination of the present war."

§ **157-55. Co-operation with federal government; sale to same.**—A housing authority may exercise any or all of its powers for the purpose of co-operating with, or acting as agent for, the federal government in the development or administration of projects by the federal government to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and may undertake the development or administration of any such project for the federal government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, a housing authority may sell (in whole or in part) to the federal government any housing projects developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project. (1941, c. 63, s. 3.)

§ **157-56. Co-operation of State public bodies in developing projects.**—Any State public body shall have the same rights and powers to co-operate with housing authorities, or with the federal government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities that such State public body has pursuant to article two of this chapter, for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income. (1941, c. 63, s. 4.)

§ **157-57. Obligations issued for projects made legal investments; security for public deposits.**—Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this article shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers as bonds or other obligations issued pursuant to article one of this chapter for the development of a slum clearance or housing project for persons of low income. (1941, c. 63, s. 5.)

§ **157-58. Bonds, notes, etc., issued heretofore, validated.**—All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including co-operating with or acting as agent of the federal government in) the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority. (1941, c. 63, s. 6.)

§ **157-59. Further declaration of powers granted housing authorities.**—This article shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this article and for a housing authority to co-operate with, or act as agent for, the federal government in the development or administration of similar projects by the federal government. A housing authority may do any and all things necessary or desirable to co-operate with, or act as agent for, the federal government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and to effectuate the purposes of this article. (1941, c. 63, s. 7.)

§ **157-60. Powers conferred by article supplemental.**—The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority. (1941, c. 63, s. 9.)

Cited in In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952).

Chapter 158.

Local Development.

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Article 1.

Local Development Act of 1925.

§ 158-1. Purposes of article; expenditures and levy of taxes authorized; elections and levies validated.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may annually set apart and appropriate from the funds derived annually from the general taxes levied and collected in such city, incorporated town, or county, an amount not less than one-one hundredth of one per cent, nor more than one-tenth of one per cent, upon the assessed valuation of all real and personal property taxable in such city, incorporated town, or county, which funds shall be used and expended under the direction and control of the mayor and board of aldermen, or other governing body of such city, or the governing body of any incorporated town, or the county commissioners of any county, under such rules and regulations or through such agencies as they shall prescribe, for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city, or incorporated town or in such county; encouraging the building of railroads thereto, and for such other purposes as will, in the discretion of the mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, increase the population, taxable property, agricultural industries and business prospects of any city, incorporated town, or any county.

Notwithstanding any constitutional limitations or limits provided by any general or special law, taxes within the limits set out above may be levied by the governing body of a county or municipality for the purpose of carrying out the provisions of this article, and the special permission of the legislature is hereby given for the levying of such taxes, subject to the requirements of G. S. 158-2 and 158-3. Provided, that any elections heretofore held by any county or municipality resulting in the adoption of this article are hereby ratified and validated, and in such counties and municipalities special levies within the limits set in this section heretofore or hereafter made are hereby ratified and validated. (1925, c. 33, s. 1; 1953, c. 1048, s. 1; 1961, c. 294.)

Editor's Note.—The 1953 amendment substituted "one-one hundredth" for "one-fortieth" near the beginning of the section.

The 1961 amendment added the second paragraph.

Payment of Expenses of Chamber of Commerce.—Prior to the 1961 amendment authorizing a tax levy to carry on the special purposes of this article, it was held that this article did not authorize a city to use its tax revenues for the payment of expense incident to the ordinary activities of the chamber of commerce of the city. See Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950).

§ 158-2. Ratification or petition of voters required; exception as to appropriations from nontax sources.—No city, incorporated town, or county, shall raise or appropriate money from tax sources under this article unless and until this article shall have been approved by a majority of those voting in such city, incorporated town, or county, at an election as provided in this article; or by a petition of the registered voters in any town of less than three thousand inhabitants, as provided in this article. Provided, that money may be appropriated from nontax sources without the election or petition hereinabove required. (1925, c. 33, s. 2; 1959, c. 369; 1963, c. 1229, s. 1.)

Editor's Note.—The 1959 amendment substituted "those voting in" for "the qualified voters of" in the first sentence.

The 1963 amendment inserted "from tax sources" near the beginning of the section and added the proviso at the end.

Section 1½ of the 1963 amendatory act provides that it shall not apply to Brunswick, Forsyth, Guilford, Lenoir, New Hanover and Pender counties.

Cited in Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950); Dennis v. Raleigh, 253 N. C. 400, 116 S. E. (2d) 923 (1960).

§ 158-3. Election to adopt article.—The mayor and board of aldermen, or other governing body of any city, or the governing body of any incorporated town, or the county commissioners of any county, may at any time by ordinance call a special election for the purpose of submitting the question of the approval of this article to the voters of such city, incorporated town, or county. In said ordinance said board of aldermen, or other governing body of any city, or town, or said county commissioners, shall specify the time of holding the election and determine and set forth whether or not there shall be a new registration of the voters for such election. Notice of the registration of the voters and of the election shall be given, the voters shall be registered, the election shall be held, the returns shall be canvassed, and the results shall be determined, declared and published under and pursuant to the provisions of § 160-387, known as the Municipal Finance Act, and as therein provided for an election upon a bond ordinance providing for the issuance of bonds for a purpose other than the payment of necessary expenses of a municipality. A ballot or ballots shall be furnished to each qualified voter at said election. The ballots for those who vote in favor of this article shall contain the words "for the act to aid in the development of any city, incorporated town, or county," and the ballots for those who vote against this article shall contain the words "against the act to aid in the development of any city, incorporated town, or county." Except as otherwise provided in said § 160-387, the registration and election shall be conducted in accordance with the laws then governing elections for municipal or county officers in such municipality or county, and governing the registration of the electors for such election of officers. (1925, c. 33, s. 3.)

Cited in Horner v. Chamber of Commerce, 235 N. C. 77, 68 S. E. (2d) 660 (1952).

§ **158-4. Action to invalidate election; limitation.**—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of the statement showing the result of the election. (1925, c. 33, s. 4.)

§ **158-5. Petition to adopt article in certain towns.**—In any incorporated town of less than three thousand inhabitants, in lieu of an election as herein provided, the will of the voters may be determined by a petition in writing giving approval of this article, which petition shall be signed by at least three-fourths of all the registered voters of said municipality whose names appeared upon the registration books of the municipality for the election of municipal officers next preceding the time of the filing of said petition: Provided, that such three-fourths of the voters shall be the owners of at least seventy-five per cent of the total taxable property of said town, as shown by the assessed valuation, and the tax lists of such town as last fixed for municipal taxation. The residence address of each signer shall be written after his signature; each signature to the petition shall be verified by a statement (which may relate to a number of signatures) made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths to the effect that the signature was made in his presence, and is the genuine signature of the person whose name it purports to be. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet. The board of aldermen or other governing body of said town shall canvass said petition and shall include in their canvass the voters signing the petition, and the number of voters upon the registration books and qualified to sign the petition, and the assessed valuation as last fixed for municipal taxation of the property owned by the voters signing the petition, and the entire assessed valuation of property within the town, and shall judiciously determine and declare the result of the canvass of said petition, and shall prepare and publish a statement of the result, and publish the same as required in the case of an election by ballot under this article. The same limitation upon the right of action or defense founded upon the invalidity of the petition shall apply in the case of an election by ballot under this article. (1925, c. 33, s. 5.)

§ **158-6. Effect of adoption of article.**—If and when this article shall have been approved by the voters of any city, incorporated town, or county, at an election or by petition as provided by this article, then and thereafter the governing body of such city, or incorporated town, or the county commissioners of such county, may raise by taxation and appropriate money within the limits and for the purposes specified in this article. (1925, c. 33, s. 6.)

Local Modification.—Pamlico: 1925, c. 33, s. 7.

§ **158-7. Disposition of surplus revenues.**—At the close of each fiscal year all surplus revenues and unencumbered balances in any fund created under this article shall be carried over into the ensuing fiscal year for the same purposes. (1953, c. 1048, s. 2.)

ARTICLE 2.

Economic Development Commissions.

§ **158-8. Creation of municipal county or regional commissions authorized; composition; joining or withdrawing from regional commissions.**—The governing body of any municipality or the board of county commissioners of any county may by resolution create an economic development commission for said municipality or county. The governing bodies of any two or more municipalities and/or counties may by joint resolution, adopted by separate vote of each governing body concerned, create a regional economic development commission. A municipal or county economic development commission shall consist of from three to nine members, named for terms and compensation (if any) fixed by its respective governing body. The membership, compensation (if any), and terms of a regional economic development commission, and the formula for its financial support, shall be fixed by the joint resolution creating the commission. Additional governmental units may join a regional commission with the consent of all existing members. Any governmental unit may withdraw from a regional commission on two years' notice to the other members. The resolution creating a municipal, county, or regional economic development commission may be modified, amended, or repealed in the same manner as it was originally adopted. (1961, c. 722, s. 2.)

§ 158-9. Organization of commission; rules and regulations; committees; meetings.—Upon its appointment, the economic development commission shall promptly meet and elect from among its members a chairman and such other officers as it may choose, for such terms as it shall prescribe in its rules and regulations. The commission shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint such committees as the work of the commission may require. The commission shall meet regularly, at least once every three months, at places and dates specified in the rules. Special meetings may be called as specified in the rules. (1961, c. 722, s. 2.)

§ 158-10. Staff and personnel; contracts for services.—Within the limits of appropriated funds, the commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for such services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for such services as may be provided by such agencies; and it is hereby empowered to carry out the provisions of such contracts as it may enter. (1961, c. 722, s. 2.)

§ 158-11. Office and equipment.—Within the limits of appropriated funds, the commission may lease, rent, or purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment. (1961, c. 722, s. 2.)

§ 158-12. Fiscal affairs generally; appropriations and expenditures.—The commission may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any municipalities or counties, and by private and civic sources.

Each municipality or county shall have authority to appropriate funds to any local or regional economic development commission which it may have created, out of surplus funds or funds derived from nontax sources. In addition, it may appropriate any funds to such commission which shall be derived from taxes levied pursuant to article 1 of this chapter or pursuant to any general, special or local act granting authority for an industrial development or economic development tax. Such expenditures shall constitute a special purpose in addition to any allowed by the Constitution.

All expenditures by any economic development commission shall be made pursuant to a budget submitted to and approved by the appropriate governing body or bodies of the local governmental unit or units concerned. Each such commission shall annually provide the appropriate governing body or bodies with an audit of its receipts and expenditures, made by a certified public accountant, or it shall at the direction of the governing body make its records available to the unit's regular auditing accountant for such audit. The governing body or bodies concerned may impose such additional requirements governing the commission's fiscal affairs as they may deem necessary. (1961, c. 722, s. 2.)

§ 158-13. Powers and duties.—Any economic development commission created pursuant to this article shall:

(1) Receive from any municipal, county, joint, or regional planning board or commission with jurisdiction within its area an economic development program for part or all of the area;

(2) Formulate projects for carrying out such economic development program, through attraction of new industries, encouragement of existing industries, encouragement of agricultural development, encouragement of new business and industrial ventures by local as well as foreign capital, and other activities of a similar nature;

(3) Conduct industrial surveys as needed, advertise in periodicals or other communications media, furnish advice and assistance to business and industrial prospects which may locate in its area, furnish advice and assistance to existing businesses and industries, furnish advice and assistance to persons seeking to establish new businesses or industries, and engage in related activities;

(4) Encourage the formation of private business development corporations or associations which may carry out such projects as securing and preparing sites for industrial development, constructing industrial buildings, or rendering financial or managerial assistance to businesses and industries; furnish advice and assistance to such corporations or associations;

(5) Carry on such other activities as may be necessary in the proper exercise of the functions described herein. (1961, c. 722, s. 2.)

§ 158-14. Regional planning and economic development commissions authorized.—Any municipalities and/or counties desiring to exercise the powers granted by this article may, at their option, create a regional planning and economic development commission, which shall have and exercise all of the powers and duties granted to a regional economic development commission under this article and in addition the powers and duties granted to a regional planning commission under article 22 of chapter 153. In the event that such a combined commission is created, it shall keep separate books of accounts for appropriations and expenditures made pursuant to this article and for appropriations and expenditures made pursuant to article 22 of chapter 153. The financial limitations set forth in each such article shall govern expenditures made pursuant to such article. (1961, c. 722, s. 2.)

§ 158-15. Powers granted herein supplementary.—The powers granted to counties and municipalities by this article shall be deemed supplementary to any powers heretofore or hereafter granted by any general or local act for the same or similar purposes, and in any case where the provisions of this article conflict with or are different from the provisions of any other act, the board of county commissioners or the municipal governing board may in its discretion proceed in accordance with the provisions of this article or, as an alternative method, in accordance with the provisions of such other act. (1961, c. 722, s. 2.)

Editor's Note.—Session Laws 1961, c. 722, s. 5, provided that all laws and clauses of laws in conflict herewith, except as indicated in this section and G. S. 153-283 are repealed to the extent of such conflict.

ARTICLE 3.

Tax Elections for Industrial Development Purposes.

§ 158-16. Board of commissioners may call tax election; rate and purposes of tax.—The board of county commissioners in any county is authorized and empowered to call a special election to determine whether it be the will of the qualified voters of said county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as an "industrial development tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the purpose of attracting new and diversified industries to said county, and for the encouragement of new business and industrial ventures by local as well as foreign capital, and for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial plants in said county, and for the purpose of encouraging agricultural development in said county. (1959, c. 212, s. 1.)

Local Modification.—Mitchell: 1963, c. 157.

§ 158-17. Registration of voters; election under supervision of county board of elections.—There shall be no new registration of voters for such an election. The registration books shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than thirty (30) days before and not more than forty (40) days before, the close of the registration books, stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections. (1959, c. 212, s. 1.)

§ 158-18. Form of ballot; when ballots supplied; designation of ballot box.—The form of the question shall be substantially the words "For Industrial Development Tax," and "Against Industrial Development Tax," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voters may make a mark "X" to designate the voter's choice for or against such tax. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Industrial Development Tax Election." (1959, c. 212, s. 1.)

§ 158-19. Counting of ballots; canvassing, certifying and announcing results of elections.—The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State. Except as herein otherwise provided, the registration and election herein provided for shall be conducted in accordance with the general election laws of the State as provided for local elections. (1959, c. 212, s. 1.)

§ 158-20. Authorized tax rate.—If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of said county are authorized to levy a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars ($100.00) of assessed value of real and personal property taxable in said county, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 212, s. 1.)

Local Modification.—Hartnett: 1961, c. 560; Mitchell: 1963, cc. 157, 506; Person: 1961, c. 701; Tyrrell: 1961, c. 228.

§ 158-21. Creation of industrial development commission; membership and terms of office; vacancies; meetings; selection of officers; bylaws and procedural rules and policies; authority of treasurer and required bond; subsidy or investment in business or industry forbidden.—If the majority of the qualified voters voting in such election favor the levying of such a tax, then and in that event, the county commissioners may create a commission to be known as the "Industrial Development Commission" for said county. Such commission shall be composed of nine members. The terms of office of the members of the commission shall be three years, with the exception of the first two years' existence of the commission, in which three shall be appointed to serve for a period of one year, three for a period of two years, and three for a period of three years; thereafter, all members shall be appointed for three years, and shall serve until their successors have been appointed and qualified. All appointments for unexpired terms resulting from resignation, death or other causes, shall be made by the county board of commissioners. The commission shall hold its first meeting within thirty (30) days after its appointment as provided for in this article, and the beginning date of all terms of office of the commissioners shall be the date on which the commission holds its first meeting. After the members of the commission shall have been appointed and at the time of the holding of the first meeting, they shall, by a majority vote, name and select from their membership their own chairman, vice-chairman, secretary and treasurer, and shall draw up and ratify their own bylaws and procedural rules and policies. The commission member who shall be named treasurer shall have supervision of all funds administered by the commission in any way whatsoever; shall sign and countersign all checks, drafts, bills of exchange, or any and all other negotiable instruments which shall properly be issued under his supervision; and shall furnish such surety bond as shall be designated by the board of county commissioners. No money, property or funds of the commission herein created shall be used directly or indirectly as a subsidy or investment in capital assets in any business, industry or business venture. (1959, c. 212, s. 1.)

§ 158-22. Bureau set up under supervision and control of industrial development commission; furnishing county commissioners with proposed budget.—Under the supervision and jurisdiction of the industrial development commission for said county there shall be set up a bureau, the purpose of which shall be as set forth in G. S. 158-16. The commission shall have charge of the activities of this bureau, full supervision of its operations, and full responsibility for its actions. The commission shall employ personnel for the bureau, supervise its purchases and expense accounts, and administer all the tax funds which shall be turned over to the commission by county authorities from the industrial development tax and any and all other funds which may come into its hands. The commission shall be empowered to lease, rent or purchase, or otherwise obtain suitable quarters and office space for an industrial development bureau, to lease, rent, or purchase necessary furniture, fixtures, and other equipment, to purchase advertising space in periodicals which may be selected for that purpose, and to otherwise engage in any and all activities which shall, in its discretion, promote the business and industrial development and general economic welfare of said county; and it shall have full power to exercise any and all other proper authority in connection with its duties and not expressly mentioned herein. Provided, that said commission shall provide the board of county commissioners thirty (30) days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within sixty (60) days after the expiration of the fiscal year ending on June 30. (1959, c. 212, s. 1.)

§ 158-23. Board of county commissioners may function and carry out duties of industrial development commission.—Nothing herein shall prevent the board of county commissioners itself from functioning and carrying out the duties of the industrial development commission as provided for herein. (1959, c. 212, s. 1.)

§ 158-24. Counties to which article applies.—The provisions of this article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Mitchell, Onslow, Perquimans, Person, Polk, Rutherford, Tyrrell, Vance and Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101.)

Editor's Note.—Chapters 208 and 339 of the 1961 Session Laws added Caswell to the list of counties. Chapters 228, 560, 683, 701, 1011 and 1058 added Tyrrell, Harnett, Alexander, Person, Burke and Chowan, respectively.

The first and fourth 1963 amendments added Mitchell to the list of counties. The second, third and fifth 1963 amendments added Haywood, Onslow and Warren, respectively, and the sixth 1963 amendment added Perquimans.

Chapter 159.

Local Government Acts.

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ARTICLE 1.

Local Government Commission and Director of Local Government.

§ 159-1. Official title.—This article shall be known and may be cited as the Local Government Act. (1931, c. 60, s. 1.)

§ 159-2. Definitions.—The word Commission will herein be used to refer to the Local Government Commission created by this article; the word Director will refer to the Director of Local Government; the word unit will be used to refer to a county, city, town, incorporated village, township, school district, school taxing district or other district or political subdivision of government of the State; and where bonds or notes are mentioned reference shall be deemed made to any obligations to pay money issued by or in behalf of any unit unless otherwise indicated or specified. (1931, c. 60, s. 2.)

County Government Advisory Commission Abolished.—The Local Government Commission is the successor to the County Government Advisory Commission, § 3 of the Local Government Act having abolished the latter agency and ordered its books, records, documents, and files to be turned over to the Local Government Commission. It was further provided that all the functions, powers, and duties of the old commission should be transferred to the Director of Local Government. Section 6 of the Local Government Act gave the Local Government Commission discretion to require the State Auditor and the State Sinking Fund Commission to turn over books, records, and files made or filed under Public Laws 1927, c. 214, or Public Laws 1929, c. 277, or to require the same to be retained subject to the inspection of the new commission.

Duties Transferred to Director of Local Government.—The duties of the County Government Advisory Commission, now transferred to the Director of Local Government, were set out in Public Laws 1927, c. 91, s. 16, as follows: "The duties of the Commission shall be to take under consideration the whole subject of county administration; to advise with the county commissioners as to the best methods of administering the county business; to prepare and recommend to the governing authorities of the various counties simple and efficient methods of accounting, together with blanks, books, and other necessary improvements; to suggest such changes in the organization of the departments of the county government as will best promote the public interests, and to render assistance in carrying the same into operation. They may make such recommendations to the Governor from time to time as they may deem advisable as to changes in the general laws controlling county government, and such recommendations may be submitted by the Governor, upon his approval, to the next meeting of the General Assembly."

§ 159-3. Creation of Local Government Commission.—There is hereby created a commission to be known as the Local Government Commission, consisting of nine members of whom the State Auditor and the State Treasurer and the Secretary of State and the Commissioner of Revenue shall be members ex officio and of whom five members shall be appointed by the Governor to hold office during his pleasure.

One of such appointees shall have had experience as the chief executive officer or a member of the governing body of a city or town and one thereof shall have had experience as a member of the governing body of a county at the time of their appointment. The members of the Commission, both ex officio members and appointed members, shall be required to give such bond, if any, as the Governor may require. The State Treasurer shall be ex officio Director of Local Government and shall also be the treasurer and chairman of the Commission. The Board shall elect a vice-chairman from its members who shall hold office at the will of the Commission. The appointed members of the Commission shall be entitled to ten dollars for each day actually spent in the service of the Commission, but shall receive no salary or other compensation, and all members shall be entitled to their necessary traveling and other expenses. The Director shall appoint some competent person as secretary of the Commission and assistant to the Director and may appoint a deputy secretary and such other assistants as may be necessary, who shall be responsible to the Director. The salaries of the secretary of the Commission and the deputy secretary shall be set by the Governor subject to the approval of the Advisory Budget Commission. The deputy secretary shall have and exercise each and every power of whatsoever nature and kind as the secretary of the Commission himself may exercise, and all actions taken by the deputy secretary and the signing by him of any and all documents and papers provided for in this article shall be effective the same as though the secretary of the Commission himself had taken such action or signed such documents and papers. The Commission shall have power to adopt such rules and regulations as may be necessary for carrying out its duties under this article. The Commission shall hold quarterly regular meetings in the city of Raleigh at such place and times as may be designated by the Commission, and may hold special meetings at any time upon notice to each member personally given or sent by mail or telegraph not later than the fifth day before the meeting, which notice need not state the purpose of the meeting. It shall have the right to call upon the Attorney General or any assistant thereof for legal advice in relation to its powers and duties. The functions of the Local Government Commission and of the Director of Local Government shall be maintained and operated as a separate and distinct division of the department of the State treasury. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130.)

Editor's Note.—The 1933 amendment made the Secretary of State an ex officio member of the Commission, made the Treasurer ex officio Director, and provided for the appointment by the Director of the secretary of the Commission and assistant to the Director, and added the last sentence. Section 3 of the amendatory act provides for the transfer of the records to the State Treasurer.

Prior to the 1957 amendment the salary of the secretary to the Commission was fixed by the Director subject to the approval of the Governor.

The 1963 amendment changed the seventh and eighth sentences so as to provide for the appointment and salary of a deputy secretary and inserted the ninth sentence.

See 11 N. C. Law Rev. 251, for comment on this section as amended in 1933.

§ 159-4. Executive committee; powers; quorum.—The State Auditor and State Treasurer, the Commissioner of Revenue and Secretary of State shall constitute the executive committee of the Commission and shall be vested with all the powers of the Commission except when the Commission is in session and except as otherwise provided in this article. Action of the Commission as a whole and of the executive committee shall be taken by resolution which shall be in effect upon passage by a majority of the members of the Commission or the committee present at the meeting at which such resolution is passed. A majority of the Commission shall be a quorum. (1931, c. 60, s. 8; 1933, c. 31, s. 2.)

Editor's Note.—The 1933 amendment substituted Secretary of State for the Director as a member of the committee.

§ 159-5. Executive committee may act for Commission; bond for expenses for attending special meetings.—All action herein required or permitted to be taken by the Commission may be taken by the executive committee and shall be regarded as action by the Commission unless otherwise herein expressly provided, but the committee shall not overrule or reverse any action of the Commission as a whole. The Commission shall not be required to meet as a whole except at the times fixed for quarterly sessions, and may demand that any application for a special meeting be accompanied by a bond or other security for the costs and expenses of such special meeting to be given by the unit or person at whose request the special meeting is called. (1931, c. 60, s. 9; 1953, c. 675, s. 27.)

Editor's Note.—The 1953 amendment deleted "may" formerly appearing before "be accompanied" near the middle of the second sentence.

§ 159-6. Review by Commission of actions of executive committee.—Action of the Commission taken by the executive committee, except approval of notes maturing not more than six months from their date, shall be subject to review by the Commission as a whole upon the application of any aggrieved party, including any taxpayer or citizen, and including any member of the executive committee, if the aggrieved party shall within five days after such action by the executive committee file with the Commission a request for such review. (1931, c. 60, s. 10.)

§ 159-7. Application to Commission for issuance of bonds or notes.—Before any bonds or notes may be issued by or in behalf of a unit the board authorized by law to issue the same, or a duly authorized agent of said board, shall file application with the Commission on a form prescribed by the Commission for its approval of the proposed bonds or notes, which application shall state such facts and shall have annexed thereto such exhibits in regard to such bonds or notes and to such unit and its financial condition as may be required by the Commission. In any case where the question of issuance of proposed bonds or notes is required by law or the Constitution to be submitted to the voters at an election, such election with respect to such bonds or notes shall not be valid unless the application required herein shall have been filed not later than forty days (Sundays and holidays included) prior to such election. A statement signed by either the chairman or secretary of the Commission directed to the board authorized by law to issue the proposed bonds or notes and containing the date on which such application was filed and either a description of the proposed bonds or notes as set forth in the application or reference to the order, ordinance or resolution pursuant to which the proposed bonds or notes may be issued shall be conclusive evidence that the provisions of this section are complied with. The Commission shall consider such application and shall determine whether the issuance of such bonds or notes is necessary or expedient. (1931, c. 60, s. 11; 1949, c. 1085.)

Cross Reference.—As to purposes for which bonds may be issued and taxes levied, see § 153-77.

Editor's Note.—The 1949 amendment rewrote this section.

Validation of Proceedings Not Complying with Section.—See Session Laws 1959, c. 318.

§ 159-7.1. Objections to any proposed bonds by a citizen or taxpayer.—In the event the question of issuance of any proposed bonds of a unit is required by law or the Constitution to be submitted to the voters at an election, the board authorized by law to issue the same shall, at least ten days before filing the application with the Commission as required in § 159-7 of this article, cause notice to be given by publication once in each of two successive weeks of its intention to file such application. Except as herein otherwise provided, publication of such notice shall be governed by the provisions relating to publications in the law pursuant to which the bonds are authorized to be issued. Such notice shall state (i) the intention of said board to file the application, (ii) briefly, and in general terms only, the purpose or purposes of the proposed bonds and the maximum amount of bonds for each such purpose, (iii) the date of its first publication, and (iv) that any citizen or taxpayer objecting to the issuance of any or all of said bonds may, within ten days from and after such first publication, file a statement of his objections as hereinafter provided, and said notice shall otherwise be in such form as the Commission may prescribe.

Any citizen or taxpayer of the unit for which such bonds are proposed who objects to the issuance of any or all of said bonds may, within ten days from the first publication of such notice, file a statement with the Commission and shall file a copy thereof with the board giving such notice. Such statement shall be in writing, shall set forth each objection to issuance of said bonds, shall have attached thereto a copy of the notice given and shall be verified by the citizen or taxpayer filing the same and shall contain his address. The statement may also contain the names and addresses of other citizens or taxpayers of the unit concurring therein. The Commission shall consider such statement with the application, shall determine whether or not a public hearing shall be held as provided in § 159-9 of this article, and shall thereupon advise the objector and the board filing the application of such determination. Failure to comply with any provision of this section shall in no way affect the validity of any bonds of a unit. (1953, c. 1121.)

Editor's Note.—The act inserting this section became effective June 1, 1953.

§ **159-8. Determining advisability of proposed issues.**—In determining whether a proposed issue of bonds or notes shall be approved, the Commission may consider the necessity for any improvement to be made from the proceeds of any such bonds or notes, the amount of indebtedness of the unit then outstanding, the fact that sinking funds for existing debts have been adequately maintained or have not been adequately maintained, the percentage of collections of taxes for the preceding fiscal year, the fact of compliance or non-compliance with the law in the matter of budgetary control, the question of whether the unit is in default in the payment of any of its indebtedness or interest thereon, the existing tax rates, the increase of tax rate, if any, necessary to maintain such sinking funds adequately, the assessed value of taxable property, and the reasonable ability of the unit to sustain the additional tax levy, if any, necessary, to pay the interest and principal of the proposed obligations, as the same become payable. If the proposed issue is for a public improvement in the nature of establishing or enlarging a revenue producing enterprise, the Commission shall take into consideration the probable earnings of the improvement and the extent to which such earnings will be sufficient to pay the interest and principal when due of the proposed obligations or that part thereof to be devoted to such improvement. The Commission shall also consider the adequacy or inadequacy of the amount of the proposed issue for the accomplishment of the purpose for which the obligations are to be issued, and whether such amount is excessive. The Commission shall have authority to inquire into and to give consideration to any other matters which it may believe to have a bearing on the question presented. (1931, c. 60, s. 12.)

§ **159-9. Commission to order issue if satisfied of certain points enumerated; public hearing on refusal.**—If, upon the information and evidence received the Commission is of the opinion (i) that issuance of the proposed obligations is necessary or expedient and (ii) that the amount proposed is adequate and not excessive and, except as to funding and refunding bonds, (iii) either that adequate sinking funds have been maintained or that reasonable assurance has been given that thenceforth they will be maintained to the extent required by or under the authority of law, and (iv) that the increase in tax rate, if any, that will be necessitated for the proper maintenance of sinking funds as so required will not be unduly burdensome and (v) that the unit is not in default in the payment of the principal or interest of any of its indebtedness and (vi) that the requirements of law for budgetary control have been substantially complied with and (vii) that at least eighty (80%) per cent of the general taxes of the unit for the preceding fiscal year have been collected, then and in such event the Commission shall make its order approving such issuance. If upon the information presented the Commission is not of such opinion or is in doubt as to any facts or as to any conclusions to be drawn therefrom, it shall so notify the officer or board making the application, and if such officer or board so request, shall give notice that the Commission will hold a public hearing on the application at a time and place to be specified in such notice, at which public hearing the officers and citizens and taxpayers of the unit may be heard. The Commission may designate its secretary or any other suitable person to conduct any such hearing and to prepare a digest of testimony and submit the same and his recommendations for the consideration of the Commission. (1931, c. 60, s. 13.)

§ **159-10. Order of refusal after hearing; vote of unit to veto action of Commission.**—If after any such hearing the Commission should not be of such opinion, it shall enter an order giving its reasons for not holding such opinion and in that event the proposed obligations shall not be issued except in such amount and in such manner, if any, as the Commission may approve, or unless, and until, the proposed indebtedness shall have been submitted to and approved by a vote of the voters of the local unit for which such indebtedness is proposed, such election to be held in the manner, if any, provided by law for the holding of elections on the question of issuing such bonds, and otherwise in such manner as may be required by the Commission. (1931, c. 60, s. 14.)

§ **159-11. Review by Commission of approval or refusal of executive committee.**—An order of the Commission made by the executive committee approving such issuance shall not be reviewable by the Commission as a whole unless request for such review shall be filed with the Commission within five days, Sundays excepted, after such order shall be given (except an order passed by unanimous vote of members present approving notes running not more than six months, which shall not be reviewable) but orders of the Commission by the executive committee declining to approve issuance may be reviewed by the Commission as a whole if application therefor shall be filed with the Commission within thirty days after such order. New evidence and information may be considered upon any such review, and the Commission as a whole shall not be bound by the evidence or information considered by the executive committee. (1931, c. 60, s. 15.)

§ **159-12. Legality of bonds and notes not involved.**—The approval by the Commission of bonds or notes shall not extend to or be regarded as an approval of the legality of the bonds or notes in any respect. (1931, c. 60, s. 16.)

§ **159-13. Sale of bonds and notes.**—All bonds and notes of a unit, unless sold pursuant to a call for bids heretofore legally given, shall be sold by the Commission at its office in the city of Raleigh, but the Commission shall not be required to make any such sale or to call for bids for any bonds or notes until it shall have approved the issuance thereof as hereinabove provided nor until it shall have received such transcripts, certificates and documents as it may in its discretion require as a condition precedent to the sale or advertisement. Before any such sale is conducted the Commission shall cause a notice of the proposed sale to be published at least once at least ten days before the date fixed for the receipt of bids (i) in a newspaper published in the unit having the largest or next largest circulation in the unit or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse, and (ii) such notice, in the discretion of the Commission, may be published also in some other newspaper of greater general circulation published in the State. The Commission may in its discretion cause such notice to be published in a journal approved by the Commission and published in New York City, devoted primarily to the subject of State, county and municipal bonds; provided, however, that notes maturing not more than six months from their date may be disposed of either by private or public negotiation, after five days' notice has been given in the manner specified in clause (i) of this section; and provided, further, that upon request of the board or body authorizing any of such bonds or notes for the purpose of refunding, funding, or renewing indebtedness, and with the consent of the holder of any such indebtedness so to be refunded, funded or renewed, the Commission through the State Treasurer may exchange any such bonds or notes for a like or greater amount of such indebtedness, and make such adjustment of accrued interest as may be requested by said board or body, in which event the publication of notice as hereinabove provided shall not be required. The notice published shall state that the bonds or notes are to be sold upon sealed bids and that there will be no auction, and shall give the amount of the bonds or notes, the place of sale, the time of sale or the time limit for the receipt of proposals and that bidders must present with their bids a certified check upon an incorporated bank or trust company payable unconditionally to the order of the State Treasurer for two per cent of the face value of the bonds and one-half of one per cent on notes bid for, drawn on some bank or trust company, the purpose of such check being to secure the unit against any loss resulting from the failure of the bidder to comply with the terms of his bid. The Commission shall keep a record of the names and addresses of all who request information as to the time for receipt of bids for such bonds or notes, and shall mail or send a copy of such notice of sale and a descriptive circular in relation thereto to all such names and addresses, but failure so to do shall not affect the legality of the bonds or notes. (1931, c. 60, s. 17, c. 296, s. 1; 1933, c. 258, s. 1.)

Cross Reference.—As to sale of North Carolina Turnpike Authority revenue bonds, see § 136-89.66.

Editor's Note.—Prior to the 1933 amendment, this section provided that the bonds or notes might be exchanged for a like or greater face amount and interest on the exchanged notes collected. See 11 N. C. Law Rev. 215, for comment on this section as amended in 1933.

Public Laws 1941, c. 141, s. 1, repealed § 4392 of the Consolidated Statutes which made it a misdemeanor for certain agencies of a county, city or town to sell bonds without giving the notice required by that section. Section 2 of the repealing act provided that "no bonds heretofore [March 12, 1941] sold or contracted to be sold in the manner provided by the Local Government Act, being chapter sixty, Public Laws of 1931, as amended, shall be held to have been illegally sold by reason of failure to observe the requirements of § 4392 of the Consolidated Statutes."

See 12 N. C. Law Rev. 325, where it is suggested that this agency would hold in check bond issues for erecting and extending electric systems.

§ 159-14. Proposals opened in public; award; rejection of bids.—All proposals shall be opened in public and the bonds or notes shall be awarded to the highest legal bidder, if a fixed rate of interest is named in the notice, or shall be awarded to the highest bidder for the lowest interest rate upon which a legal offer is made if the notice states that bidders may specify the rate of interest, or, if a notice of sale of bonds states that bidders may name one rate for part of the bonds of an issue and another rate or rates for the balance, to the bidder offering to purchase the bonds at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon all of the bonds until their respective maturities, or, if a notice of sale of notes so provides, to the bidder offering to purchase the notes at the lowest interest cost to the unit, such cost to be determined by deducting the total amount of the premium bid from the aggregate amount of interest upon the notes until their maturity. No legal bids may be rejected unless all bids are rejected. If the bids rejected contain any legal bid which is legally acceptable under the advertisement, the bonds or notes shall not be sold until after further advertisement and under the conditions herein prescribed for the first advertisement. (1931, c. 60, s. 18; 1935, c. 356, s. 1; 1939, c. 231, s. 3.)

§ 159-15. Minimum price; private sale in event of no bids.—No bonds or notes shall be sold at less than par and accrued interest, nor except as herein otherwise provided or permitted shall any bonds or notes be sold except upon sealed proposals, after publication of notice as hereinabove provided, unless no bid is received upon such notice which is a legal bid and legally acceptable under such notice, in which event the bonds or notes may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice. (1931, c. 60, s. 19.)

§ 159-16. Rejection in event of objection by unit.—If after the receipt of bids and before an award of the bonds or notes an authorized representative of the unit shall object to any award which the Commission may be about to make pursuant to the foregoing provisions and shall not withdraw such objection, the Commission shall reject all bids and shall make no award until after further advertisement as herein provided. (1931, c. 60, s. 20.)

§ 159-17. Make-up of bonds or notes.—No such bond or note shall be engraved, lithographed, printed, typewritten or written upon more than one sheet of paper (but a separate sheet or sheets may be used for interest coupons), and the Commission may in its discretion require the use of a protectograph or other means to prevent the raising of the amount thereof or imitation of such bonds or notes. (1931, c. 60, s. 21.)

§ 159-18. Obligations of units must be certified by Commission.—No bonds or notes or other obligations of any unit hereafter issued shall be valid unless on the face or reverse thereof there be a certificate signed by the secretary of the Commission or an assistant designated by him either (i) that the issuance of the same has been approved, under the provisions of the Local Government Act, or (ii) that the bond or note is not required by law to be approved by the Commission. Such certificate shall be conclusive evidence that the requirements of this article as to approval by the Commission, advertisement and sale have been observed, and shall also be conclusive evidence that the requirements of §§ 159-19 and 159-20 have been complied with. (1931, c. 60, s. 22, c. 296, s. 2.)

Time Debt Contracted.—The debt is contracted during the fiscal year following that in which the debt was reduced in accordance with Constitution, Article V, § 4, even though the certificate of the secretary of the Local Government Commission was not executed within that time. Board of Education v. State Board of Education, 217 N. C. 90, 6 S. E. (2d) 833 (1940).

§ 159-19. Detailed record of all issues to be kept by Commission.—Prior to the execution of such certificate the Commission shall cause to be entered of record in its office a description of such bonds or notes, giving their amount, date, the times fixed for payment of principal and interest, the rate of interest, the place or places at which the principal and interest will be payable, the denomination or denominations and the purpose of issuance, together with the name of the board in which is vested the authority and power to levy taxes for the payment of the principal and interest of such bonds or notes and a reference to the law under which it is claimed such bonds or notes are issued, and shall require to be filed with the Commission a statement of the recording officer of the unit that all proceedings of the board in authorizing the bonds or notes have theretofore been and remain correctly recorded in a bound book of the minutes and proceedings of the board, giving in such statement the designation of the book and the pages or other identification of the exact portion of the book in which such record was made. (1931, c. 60, s. 23.)

§ 159-20. Contract for services must be approved by Commission.—All contracts and agreements made by any unit with any person, firm or corporation for services to be rendered in the drafting of forms of proceedings for a proposed bond or note issue, except contracts and agreements with attorneys at law licensed to practice before the courts of the State within which they have their residence or regular place of business, which involve no agreement, express or implied, except for legal services, shall be void unless approved by the Commission, whose duty it shall be before causing the certificate of its approval to be endorsed or placed on any such bonds or notes to satisfy itself, by such evidence as it may deem sufficient, that no such contract not so approved by the Commission is in effect in relation to such bonds or notes. (1931, c. 60, s. 24.)

§ **159-21. State Treasurer to deliver bonds or notes to purchaser; application of proceeds.**—When the bonds or notes are executed by the proper officers they shall be turned over to the State Treasurer and after the certificate of the Commission hereinabove required shall be placed thereon, he shall deliver them to the purchaser or order, collect the purchase price or proceeds and before the close of the following day remit the same to the lawful custodian of funds of the unit or, in his discretion, to the properly designated depository or depositories of the unit, after assurance that the safeguarding of such proceeds has been provided as required by law and after deducting all necessary expense including the expense of advertising, selling, shipping and delivering the bonds or notes; nevertheless in the case of bonds or notes sold for refunding or funding purposes the Treasurer may provide that such proceeds shall be deposited at the place of payment of the indebtedness to be refunded or funded for use solely in the payment of such indebtedness or under the conditions hereinabove provided he may provide for the exchange of such bonds or notes for the evidences of indebtedness to be refunded or funded thereby, or, if such indebtedness is not evidenced by bonds, notes, coupons or similar instruments, he may provide for the delivery of said new bonds or notes against a receipt or release from the creditor to whom or to which the indebtedness to be funded or refunded is owing. Coupons or notes issued in exchange for outstanding coupons shall be deemed to be notes issued for refunding or funding purposes, within the meaning of this section. (1931, c. 60, s. 25; 1935, c. 356, s. 2.)

Editor's Note.—The 1935 amendment added the latter part of the first sentence beginning with "or, if such indebtedness is not evidenced by bonds, notes, coupons." It also added the last sentence.

§ **159-22. Suit on behalf of unit for fulfillment of contracts of sale.**—The Commission shall have power to enforce by action or suit in superior court of the county or unit affected or in the federal court of the district, for and in behalf of the State or the unit affected, any contract or agreement made by the Commission for the sale of any bonds or notes of a unit. (1931, c. 60, s. 26.)

§ **159-23. Unit must remit interest and principal as they fall due; cancellation of obligations paid.**—It shall be the duty of every officer of a unit upon whom is imposed by law the duty of remitting funds for the payment of bonds, notes and interest coupons of the unit to remit to the place at which the same are payable sufficient funds for the payment of such bonds, notes and coupons in sufficient time for the payment thereof as the same fall due, and at the same time to remit to such place of payment the necessary fiscal agency fees of the disbursing bank or trust company at which such bonds, notes or coupons are payable. Upon surrender of the bonds, notes or coupons so paid the same shall be canceled. It shall be the duties of the officers remitting said funds to report to the Director, simultaneously with making the remittance, upon forms to be provided by the Director. (1931, c. 60, s. 27.)

§ **159-24. Records of unit sinking funds.**—It shall be the duty of the Director to ascertain by reports which he is hereby authorized to require made to him by any financial officer of any unit and by such other means as he may determine upon, the amounts of sinking funds collected for the payment of bonds of each unit not maturing in annual series and the investments of such sinking funds and the rate of taxation levied to provide for such sinking funds. It shall be his further duty to determine from such information whether the provisions of law for the raising and maintenance and preservation of such sinking funds have been observed and if he shall find that in any respect such provisions of law have not been observed he shall issue an order to the officers and/or board members of such unit in charge of such matters who have failed to observe such provisions, requiring them to comply therewith and stating the amount or amounts to be raised annually by taxation for such purpose, and in other respects requiring such officers and/or board members fully to comply with such laws. Within five days after the issuance of any such order, unless the Commission in its discretion shall extend such time, any officer or board member receiving the same shall be entitled to apply to the Commission for a modification of such order, and unless modified by the Commission, and if so modified, to the extent of the order as so modified, it shall be the duty of all officers and board members to whom such order is directed to comply with the same. (1931, c. 60, s. 28.)

§ 159-25. Investment of unit sinking funds.—It shall be the duty of all officers having charge of the investment of sinking funds of each unit either to deposit such funds under security therefor as provided by this article, or to invest the same (or deposit in part and invest in part) in bonds or notes of the United States or of the State of North Carolina, or in bonds or notes of such unit, or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States, with its principal office in this State; provided, that no such funds may be so invested in a building and loan association unless and until authorized by the Insurance Commissioner, or in shares of a federal savings and loan association unless and until authorized by an officer of the Federal Home Loan Bank at Winston-Salem, or in such bonds or notes of North Carolina municipalities, counties and school districts as are eligible for investment of the sinking funds of the State under any law in force at the time of investment of such local sinking funds; provided, however, that no investment shall be made in any bonds or notes of any city, county or school district except with the approval of the Commission, which is hereby directed to scrutinize with great care any applications for any such investment and to refrain from approving the same unless such investment is prudent and is safe in the opinion of the Commission and unless the legality thereof has been approved by an attorney believed by the Commission to be competent as an authority upon the law of public securities. No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. (1931, c. 60, s. 29; 1933, cc. 143, 436; 1939, c. 146.)

Cross References.—As to investing sinking funds in bonds guaranteed by the United States, see § 53-44. As to investing sinking funds in refunding bonds, see § 142-29.

Editor's Note.—The 1933 amendment deleted two clauses from this section, one qualifying the deposit in bonds of a unit by the words "if such sinking funds are applicable to the payment of such bonds or notes" and the other limiting the approval to cases where the unit is not in default of any payment of principal or interest. See 11 N. C. Law Rev. 216.

The 1939 amendment inserted the part of the section dealing with investments in shares of building and loan associations and federal savings and loan associations.

§ 159-26. Notification to unit officers of unfavorable state of sinking funds; sale of unsafe investments.—If it shall appear to the Director at any time that the sinking funds of any unit are not deposited under security or invested in securities as required by this article, it shall be his duty to notify the officer or officers in charge of such sinking funds of such failure to comply with law, and thereupon it shall be the duty of such officer or officers to comply therewith within thirty days, except as to the sale of investments held by any such sinking fund which are not eligible for the investment thereof, and as to such investments it shall be the duty of such officer or officers to sell the same within nine months after such notification of the Director is received, at a price approved by the Director; provided, however, that the Commission in its discretion may extend from time to time the time for sale of any such investments, but no one extension shall be made to cover a period of more than one year from the time the extension is made: Provided further, that the Director in his discretion may extend for a period not exceeding ninety days the time for securing funds deposited in banks prior to March eighteenth, one thousand nine hundred and thirty-one, and the Commission may, in its discretion, further extend said time, but no such extension or extensions of the time for securing such funds shall be made for a period ending later than October first, one thousand nine hundred and thirty-one, without the approval of the Commissioner of Banks. (1931, c. 60, s. 30, c. 296, s. 6.)

§ **159-27. Reports to Director as to sinking funds.**—It shall be the duty of all officers in charge of the sinking funds of units to report on forms to be furnished by the Director to the Director on the first day of July, one thousand nine hundred thirty-one, and on the first day of each January and July thereafter, a statement of the amounts of the sinking funds of such unit, and whether the same are on deposit, and if so, how the same are secured, or whether the same are invested, and if so, a description of the investments with the respective amounts thereof, in order that the Commission and the Director may be kept informed in regard to such sinking funds; but the Commission or the Director may at any other times require such reports to be made and it shall be the duty of the officers in charge of the sinking funds of any unit to make such reports as herein provided. (1931, c. 60, s. 31.)

§ **159-28. Funds of unit on deposit must be secured by corporate surety bonds.**—It shall be the duty of each officer having charge or custody of funds of a unit, of whatever kind or nature or for whatever purpose the same have been raised or shall be held, to keep them safely and to deposit the same in the depository or depositories designated in the manner provided by law; but before making such deposit, if the amount then on deposit shall exceed the amount insured by the Federal Deposit Insurance Corporation, he shall require of said depository or depositories that the excess of such deposit over and above the amount so insured shall be secured by a surety bond or bonds, issued by a surety company or companies authorized to transact business in the State of North Carolina, the form of such surety bonds to be approved by the Commission in an amount sufficient to protect such excess deposits; but the Commission may, at any time, in its discretion, require an additional bond: Provided, however, that in lieu of a surety bond both as to all or any part of such excess deposits it shall be lawful to secure the same by lodging with the proper custodian hereinafter provided for such securities as are by this article made eligible for investment of sinking funds of local units, such securities to be selected under the terms and conditions of investments of such sinking funds, including approval of certain classes of securities by the Commission. Any bank or trust company furnishing United States government bonds, North Carolina State bonds, county or municipal bonds, as security for such excess deposits, shall deposit said bonds with another bank which has been approved by the Commission as a depository bank for such purposes, the State Treasurer, or the federal reserve bank, and said bonds when so deposited shall be held for the benefit of the unit and subject to the order of the governing body or board of such unit, and subject to the inspection at any time by a representative of the governing body or board of such unit and by a representative of the Commission. Each such officer having charge or custody of the funds of a unit and the surety or sureties on his official bond, after a deposit of said funds has been secured by him in the manner hereinabove required, shall not be liable for any losses sustained by the unit by reason of the default or the insolvency of the said depository or depositories. No security shall be required for the protection of funds of a unit remitted to and received by any bank or trust company within or without the State of North Carolina for the sole and exclusive purpose of paying the maturing principal of or interest on bonds or notes of the unit, when such bank or trust company is the agreed place of payment of such principal or interest and when such funds are remitted within sixty days prior to the maturity of such principal or interest. (1931, c. 60, s. 32, c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; 1953, c. 675, s. 28.)

Local Modification.—Alleghany, Ashe, Rockingham: 1935, c. 375, s. 2.

Editor's Note.—This section was so changed by the early amendments that a statement of the changes is not practical.

Section 2 of the 1939 Act repealed all laws and clauses of laws in conflict except subsection (d) of § 53-45.

The 1953 amendment inserted "have" in lieu of "has" preceding "been raised" near the beginning of the first sentence.

§ **159-29. Semiannual reports to Director on status of unit funds.**—It shall be the duty of all officers having the charge or custody of any funds of any unit to report to the Director on the first days of January and July of each year (or such other semiannual dates as may be fixed by the Director) and at other times upon direction of the Commission or the Director the amounts of funds of the unit then in their charge or custody, and the amounts of deposits of such funds in any depository or depositories, and a description of the surety bonds or collateral securities deposited to secure the same. It shall be the duty of the Director to require such reports to be made and to see that the provisions of this section are complied with. (1931, c. 60, s. 33.)

§ **159-30. Officers of local units relieved of personal liability when bank deposits are insured.**—If it shall be impossible or impracticable to safeguard any funds of the unit in the manner required by this article, if deposited in any depository within the unit, the officer having charge or custody of such funds may deposit the same without personal responsibility in any bank or trust company organized under the laws of the United States of America, or of any state within said country, either within or without the boundaries of said unit in which deposits are insured by the Federal Deposit Insurance Corporation, in accordance with the acts of Congress: Provided, that without the approval of the Local Government Commission, the sum on deposit in any such bank, at any time, shall not exceed the amount insured by the said Federal Deposit Insurance Corporation. (1931, c. 60, s. 34; 1935, c. 424, s. 1.)

Local Modification.—Ashe: 1935, c. 424, s. 2.

Editor's Note.—The 1935 amendment added the phrases "without personal responsibility" and "either within or without the boundaries of said unit," etc. It also added the proviso.

§ **159-31. Appointment of unit administrator of finance in event of default.**—If funds sufficient for the payment of the principal and interest due at any time upon any valid indebtedness of any unit shall not be remitted for the payment thereof in sufficient time to pay the same when due the Director may appoint a qualified person of good repute and ability as administrator of finance of such unit, at such compensation as may be determined by the Director, but not in excess of three hundred dollars monthly nor for a period of more than one year except with the approval of the Governor. It shall be the duty of such administrator of finance to take full charge of the collection of taxes in such unit and the charge and custody of all funds of the unit and the safeguarding thereof and of the disbursement of moneys for all purposes, or to take charge of such part of any or all such duties as the Director may determine. The administrator may retain under his supervision and control any city or county officers or employees for the performance of any part of such duties falling within the lines of their customary office or employment or may remove any tax collector or accountant or other officer having connection with the collection and disbursement of funds of the unit in his discretion. The administrator shall comply, on behalf of such units, with all the requirements of law applicable to such units, officers and employees. Any questions or disputes arising out of the appointment of such administrator or his assumption of duties hereunder or as to his powers, may be presented to the Commission on the application of any officer, taxpayer or citizen of the unit or on the application of the Director, and the Commission shall be empowered to determine the same. The compensation and expenses of the administrator, and the expenses of the Director and the Commission, arising out of the provisions of this section, shall be a charge against the unit and shall be paid by it and shall be deemed a special purpose for the payment of which this special provision of law is made, and the amount thereof shall be included in the budget of the unit for the following fiscal year.

One year after any unit shall have failed to remit the principal and/or interest due upon any valid indebtedness then outstanding, upon petition of the holders of fifty-one per centum of the indebtedness of the unit, the Director shall appoint an administrator of finance, by and with the consent of the resident judge of the district in which the unit is located, who, upon his appointment, shall have the authority hereinbefore in this section conferred upon the administrator of finance.

The petition shall disclose all facts and circumstances available in connection with the issue in default, including the names and addresses of all known holders of such issue, and, insofar as the petitioning holders, shall contain a consent to the filing of the petition.

The order shall be in such form as the Director and judge may determine, to include, however, such facts as may appear from the petition to be the facts with respect to the issue in default. It shall show the consent of the resident judge to the appointment of the administrator of finance named in the order.

Immediately upon the filing of the petition and the entry of the order, which shall be done within ten days after the date the petition is filed with the Director, the Director shall certify, over his hand and the seal of the Treasurer, the petition and order to the superior court of the county where the unit is located, if it be a unit other than the county, and to the superior court of the county, if the unit be a county. Upon receipt of the certified petition and order, it shall be the duty of the clerk of the superior court to which certified to issue such notice as may be prescribed by the Director, and cause the same to be published in a newspaper of general circulation published in the State and in a journal approved by the Commission for "notice of sale" of evidences of indebtedness, once a week for four weeks, and issue a copy of such notice to all holders of the issue in default named in the petition. Such notice shall contain a provision requiring all holders of such issue to appear in person or through attorney, and disclose their name, address and amount of the issue held.

Upon the expiration of the period of publication hereinbefore prescribed, the cause shall be transferred by the clerk of the superior court to the civil issue docket of the court, and the same shall thereafter stand upon such docket to be proceeded with as in other civil actions, but shall be placed upon the trial calendar at each term of the court thereafter for the trial of civil actions until final action is entered by the court at term.

Any action taken in the cause shall be after notice issued and published as hereinbefore provided, but from any order entered, unless the holders of all of the issue in default shall have responded, shall remain open for a period of thirty days after the publication of the order as hereinbefore prescribed for publication of notice. If the holder of any amount of such issue in default shall, during said thirty-day period, file a petition for a modification or revocation of the order, said order shall not become effective until the petitioning holder or holders shall have been heard by the court. If the order shall be, on such petition, modified or revoked, the order modifying or revoking the order shall become the order of the court in the cause.

Upon the notice hereinbefore prescribed and in the manner herein provided, the court shall have authority to enter any order which shall be for the interest of the unit and the holders of the issue in default, but no order entered shall become finally operative until the expiration of the time hereinbefore provided for the filing of petitions for modification or revocation. Any order which is agreed to by the unit and the holders of the issue in default may be entered at any time, but such order shall be likewise published, and unless agreed to by the holders of the entire issue in default, shall become operative only after the expiration of the period hereinbefore provided for the filing of petitions for modification or revocation, and the court shall have authority, upon the filing of such a petition, to modify or revoke the order entered by agreement, which order then entered, shall thereupon become effective and operative.

The costs of all publications and of the issuance of all notices shall be paid by the administrator of finance: Provided, however, that the holders of the issue in default filing the original petition shall advance the necessary cost, but shall be reimbursed by the administrator of finance upon the docketing of the cause upon the civil issue docket of the superior court to which certified.

The court, with the consent of the Director, for good cause shown, shall have the right to remove the administrator of finance appointed, and, with the consent of the Director, appoint another administrator of finance in his place. The administrator of finance appointed upon the institution of the cause or thereafter by the court shall give such bond as shall be prescribed by the Director and the resident judge of the district. The compensation shall be fixed for the administrator of finance by the Director and the resident judge of the district and all costs shall be paid as provided in the first paragraph of this section. Until the final determination of the cause and the entry of an order finally discharging an administrator of finance, the administrator of finance shall have such powers and perform such duties as prescribed in the first paragraph of this section. (1931, c. 60, s. 35; 1933, c. 374.)

Editor's Note.—The 1933 amendment added all of this section beginning with the second paragraph.

This section was amended by providing an additional method for the adjustment of the indebtedness of local government units, and the proceeding so authorized seems to be in the nature of a creditors' bill, with a very general power in the court to make orders. The duties and powers of the administrator of finance are not defined, but they would probably be similar to those of a receiver in a creditors' suit. See 11 N. C. Law Rev. 215.

§ **159-32. Director to inform unit of amount of taxes to be levied.**—At least thirty days before the time for the levy of taxes in each unit of the State for the payment of the principal or interest of its obligations, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of each board having power to levy such taxes, a statement of the amount to be provided by taxation or otherwise for the payment of the interest and sinking fund requirements upon such obligations within the fiscal year and for the payment of the obligations maturing in such year. (1931, c. 60, s. 36.)

§ **159-33. Director to notify units of due dates of obligations.**—At least thirty days before the date upon which the principal or interest of any obligation of any unit shall be payable, if the Director shall have sufficient information available therefor, it shall be his duty to mail to the recording officer of such unit a statement of the amount of principal and interest so payable and a statement of the requirement of this article that such amount shall be remitted to the place at which the same are payable. (1931, c. 60, s. 37.)

§ **159-34. Unit must levy sufficient taxes to provide for maturing obligations.**—Any board whose duty it shall be to provide for the payment by taxation or otherwise of the principal or interest of any valid obligations of the unit shall make provision for such payment by the levy of such taxes as are authorized to be levied therefor at or before the time provided for such tax levy, or make other legal provision for such payment, and every member thereof who shall be present at the time for such levy or provision shall vote in favor thereof and shall cause his request that such tax levy or provision be made to be recorded in the minutes of the meeting: Provided, in making such levy any such board may determine and make allowance for moneys due to it and receipt of which may be reasonably anticipated by such unit. (1931, c. 60, s. 38; 1933, c. 332.)

Editor's Note.—The 1933 amendment added the proviso.

§ **159-35. Failure to meet obligations when due if funds are in hand a misdemeanor.**—If the officer of any unit whose duty it shall be to pay any of the principal or interest of valid obligations of the unit or to remit the same to the place of payment as provided in this article, shall have funds for such payment at his disposal but shall fail or refuse so to do within the time required hereby and in sufficient amount for such payment, whether or not such payment or remission for payment shall have been ordered or forbidden by any board or officer of the unit, the officer so failing or refusing shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of anyone aggrieved thereby. (1931, c. 60, s. 39.)

§ **159-36. Voting for appropriation for other purposes than obligations or application of funds otherwise a misdemeanor.**—Every member of any board of a local unit who shall knowingly vote for any appropriation to any purpose other than the payment of the interest or principal or sinking fund of any bonds or notes of the unit any money raised by taxation or otherwise for such purpose, until all of such principal and interest shall have been paid, and any disbursing officer who shall knowingly pay out any of such money for any other purpose than the payment of such interest or principal or sinking fund until all of such principal and interest shall have been paid, whether or not such payment shall have been ordered or forbidden by any board or officer of the unit, shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of anyone aggrieved thereby. (1931, c. 60, s. 40.)

§ **159-37. False statement a misdemeanor.**—If any officer or any member of any board upon whom duties are imposed by this article shall knowingly make or certify any false statement in any certificate or statement required or permitted by this article, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of anyone aggrieved thereby. (1931, c. 60, s. 41.)

§ **159-38. Willful failure to perform duty a misdemeanor.**—If any officer or any member of any board of any local unit upon whom duties are imposed by this article or of whom duties are required pursuant to the provisions of this article shall knowingly and willfully fail or refuse to perform any such duty, he shall be guilty of a misdemeanor and upon conviction shall be fined and/or imprisoned in the discretion of the court, and shall be liable in a civil action for all damages on the suit of any aggrieved person. (1931, c. 60, s. 42.)

§ **159-39. Other violations misdemeanor.**—Notwithstanding the declarations of this article that certain specific offenses shall constitute misdemeanors and be punishable, the willful violation by the Director or by any member of the Commission or any officer or member of a board of a unit of any duty whatsoever imposed upon him by or under the provisions of this article, or his willful failure, neglect or refusal to perform any such duty, shall be, and is hereby declared to be a misdemeanor, and shall be punishable by fine and/or imprisonment in the discretion of the court, and shall render the offender liable for damages at the suit of any aggrieved party. (1931, c. 60, s. 43.)

§ **159-40. Prosecution by Attorney General; investigation of charges.**—In case of the violation of any criminal provisions of this article, the Attorney General of the State of North Carolina upon complaint of the Director, whose duty it shall be to make such complaint in case of any such violation, shall investigate the charges preferred and if in his judgment the law has been violated he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending person or persons. Upon request of the Governor, the Attorney General shall take charge of such prosecution and, at the request of the Governor, special counsel may be employed to assist the Attorney General or the solicitor. (1931, c. 60, s. 44.)

§ **159-41. Removal by Governor of offending persons.**—Without abating any of the provisions of this article for criminal and civil actions, and for penalties and damages, it shall be the duty of the Director in the case of any breach of the provisions of this article or any failure or refusal to comply with any requirement made herein or permitted to be imposed hereby, by any member of the Commission or by any officer or member of a board of any unit (but in case of any such non-compliance, failure or refusal by the Director himself, it shall be the duty of the Attorney General through the solicitor of the proper district) to bring the offense to the attention of the Governor, who shall consider the same and may in his judgment remove from office the offending officer or member and appoint a successor, subject to other provisions of law as to the appointment or election of successors of officers or members so removed. Such order of removal, however, shall not be effective until after a hearing before the Commission, which shall set a time therefor and shall give due notice thereof to the offending officer or member, and the order of the Commission after such hearing, whether such order shall confirm or refuse to confirm the removal, shall be final. In the event the Commission shall refuse to confirm the order of removal such officer or member shall continue his duties as such officer or member, but otherwise shall be removed from office pursuant to the order of removal issued by the Governor. (1931, c. 60, s. 45.)

§ **159-42. Law applicable to all counties, cities and towns.**—The provisions of this article shall apply to every unit having the power to levy taxes ad valorem, regardless of any provisions to the contrary in any general, special or local act enacted before the adjournment of the regular session of the General Assembly in 1961. (1931, c. 60, s. 74; 1935, c. 356, s. 3; 1941, c. 191; 1947, c. 992; 1949, c. 925; 1955, c. 1276; 1961, c. 1106.)

Editor's Note.—The 1935 amendment added a clause at the end of the section reading "before the adjournment of the regular session of the General Assembly in one thousand nine hundred thirty-five." Prior to the 1941 amendment the article applied to "all counties, cities and towns." The amendment changed the date at the end of the section from 1935 to 1941, and the 1947 amendment changed it to 1947. The 1949 amendment inserted the word "general" and changed the date to 1949.

The 1955 amendment substituted "1955" at the end of this section for "1949." It also changed the caption by substituting "counties, cities and towns" for "units having power to levy taxes ad valorem."

The 1961 amendment substituted "1961" for "1955" at the end of this section.

For brief comment on the 1947 amendment, see 25 N. C. Law Rev. 455.

§ **159-43. Temporary loans and notes therefor.**—In the issuance of notes for temporary loans as provided by the County Finance Act, the Municipal Finance Act and this article, the governing body may delegate to any officer of the unit the power to fix the face amount, the rate of interest, the time of maturity and the place of payment of principal and interest within and under the limitations, if any, established by the resolution authorizing the issue of such notes and the limitations fixed by this article and other laws. (1931, c. 60, c. 75, c. 296, s. 4.)

§ **159-44. Notes and bonds of units redeemable before maturity.**—Any notes or bonds of a unit may (but need not) be made subject to call for redemption before maturity at the option of the unit issuing them, but no such bond or note shall be redeemed before maturity without the consent of the holder thereof, unless such bond or note states on its face that the unit reserves the right to redeem the same before maturity. There may also be incorporated in or endorsed upon notes, bonds or coupons of a unit provisions reserving to the unit the right to extend the time for payment thereof to a fixed or determinable future time, specified in such provisions. The word "determinable" is here used in the same sense that it is used in the Negotiable Instruments Law of North Carolina (chapter twenty-five). The negotiability of bonds, notes and coupons of a unit shall not be affected by the reservation therein of a right of redemption or extension pursuant to this section. (1931, c. 296, s. 3; 1933, c. 258, s. 2; 1935, c. 356, s. 4.)

Cross Reference.—As to accelerating maturity of bonds and notes of counties and municipalities, see § 153-81.

Editor's Note.—The 1933 amendment rewrote this section, and the 1935 amendment added the last three sentences.

§ **159-45. Plans or agreements for funding or refunding; exchange for outstanding coupons or interest notes.**—The board or body authorized to issue funding and refunding bonds of a unit is hereby invested with all powers necessary for the execution and fulfillment of any plan or agreement for the settlement, adjustment, funding, or refunding of the indebtedness of the unit, not inconsistent with general laws relating to the issuance of funding and refunding bonds. Such plan or agreement may provide among other things for the issuance of funding bonds and refunding bonds; for the issuance of new coupons or notes in exchange for outstanding coupons, for the purpose of enabling the unit to reserve the right to extend the time for payment of the whole or a part of the interest represented by such outstanding coupons; for the endorsement or stamping of bonds, notes or coupons, for the purpose of extending the time for payment of the principal thereof or interest thereon or for the purpose of reserving the right to extend said time; and for the doing of any other thing authorized by law with respect to outstanding indebtedness of the unit. All such plans or agreements made or entered into prior to May 9, 1935, and approved by the Local Government Commission are hereby ratified and validated. New coupons or interest notes issued in exchange for outstanding coupons as aforesaid shall be executed in such manner as may be determined by said board or body, and approval thereof by the Local Government Commission need not be noted thereon. A certificate signed by the secretary of the Local Government Commission or by an assistant designated by him, stating that such new coupons or interest notes have been approved by the Local Government Commission or under the provisions of the Local Government Act, shall be conclusive evidence that the requirements of this article with respect to approval by said Commission have been complied with. All provisions of law relating to the means of payment of coupons surrendered in exchange for new coupons or interest notes as aforesaid shall apply to the payment of such new coupons or interest notes. The powers conferred by this section with respect to the issuance of new coupons or interest notes in exchange for outstanding coupons, and with respect to the endorsement or stamping of bonds, notes or coupons, may be exercised by resolution of the board or body authorized by law to issue funding bonds or refunding bonds of a unit, and any such resolution shall be in force and effect from and after its passage, and need not be submitted to the voters of the unit.

The State of North Carolina hereby gives its assent to the act of Congress approved May twenty-fourth, one thousand nine hundred and thirty-four, entitled "An Act to amend an Act entitled 'an Act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," and hereby authorizes all units, after approval has been given thereto by the Local Government Commission, to proceed under the provisions of said act for the readjustment of their debts. (1933, c. 258, s. 4; 1935, c. 356, s. 5.)

Cross Reference.—As to statute authorizing local units of State to avail themselves of Federal Bankruptcy Act, see § 23-48.

Editor's Note.—The 1935 amendment added all of this section beginning with the second sentence.

Ordinance provision that holders of proposed refunding bonds should be subrogated to all rights and powers of holders of refunded bonds is sanctioned by law, and such provision will enter into and become an integral part of the bonds when issued, with contractual force and effect, and may not be impaired by subsequent legislation. Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

Defendant municipality proposed to issue refunding bonds to be exchanged for like amounts of the original bonds in the hands of the holders of the original indebtedness, the refunding bonds to be secured by all rights and powers of taxation which protected and formed a part of the obligation of the original bonds. It was held that the parties and the debt are the same and the transaction amounts in reality to an extension and renewal of the original bonds under legislative sanction, and an act of the legislature, passed after the issuance of the original bonds, limiting the tax rate of the municipality is inoperative as to the refunding bonds when the limitation therein imposed would prevent the payment of the refunding bonds according to their tenor, and the contention that even though the refunding bonds would not create a new debt, such debt would be evidenced by a new contract, and that therefore the refunding bonds would be subject to the limitation of the statute enacted prior to the issuance of the refunding bonds, is untenable. Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

§ 159-46. Provisions in bond resolutions set out.—In any ordinance, order or resolution authorizing or providing for the issuance of bonds or notes of a unit for the purposes of refunding, funding or renewing indebtedness, it shall be lawful to incorporate any or all of the following provisions, which shall have the force of contract between the unit and the holders of said bonds or notes, and every board or body authorized to issue such bonds or notes or to levy taxes for their payment shall have power to do all things necessary or convenient for the purpose of carrying out such provisions, viz.:

(1) Provisions for the creation of a special fund or funds to be used for the purchase of said bonds or notes at market prices less than par and accrued interest, or for the payment of the bonds or notes at par and accrued interest at or before maturity. All bonds or notes so purchased or paid shall be canceled and shall not be reissued.

(2) Provisions for levying a tax annually or otherwise for the payment of the principal of the bonds or notes or for the said retirement fund.

(3) Provisions pledging any taxes, special assessments, or other revenues or moneys of the unit to the payment of said bonds or notes or to said retirement fund.

(4) Provisions whereby, so long as any of said bonds or notes are outstanding, the unit will not pledge any particular revenues or moneys, except special property taxes, without securing such bonds or notes equally and ratably with the other obligations to be secured by such pledge.

(5) Provisions whereby any special fund aforesaid may be a revolving fund, and used temporarily for other purposes, and thereafter replenished, upon such terms and conditions as may be set forth in said ordinance, resolution or order.

(6) Provisions for the custody of any such special fund by a bank or trust company in this or any other state or by the State Treasurer.

(7) Provisions for the allocation and payment daily or periodically of moneys payable to any of said special funds.

(8) Provisions for the determination by arbitration of any question arising under any of the foregoing provisions.

(9) Provisions whereby the holders of said bonds or notes, whether such bonds or notes shall have been delivered in exchange for the indebtedness refunded or funded thereby or shall have been sold and the proceeds thereof applied to the retirement of such indebtedness, shall be subrogated to all the rights and powers of the holders of such indebtedness.

(10) Provisions whereby bonds and notes, together with the matured and unmatured interest thereon, may be deposited with the State Treasurer as trustee, or some bank or trust company designated as trustee by the governing body of the unit with the approval of the Local Government Commission, and bonds issued from time to time or at specified intervals of time for the funding or refunding of all or any part of the indebtedness so deposited; the indebtedness of any depositor to be canceled and extinguished at such time or times as the plan or agreement for the settlement, adjustment, funding or refunding of the indebtedness of the unit may specify, and need not be canceled and extinguished simultaneously with the issuance of bonds for funding or refunding a part of such indebtedness: Provided, that the ordinance, order, or resolution authorizing the issuance of funding or refunding bonds referred to in this subdivision (10) may be adopted, or passed at such times as the plan or agreement may designate.

No such provisions shall become effective without the approval of the Local Government Commission. (1933, c. 258, s. 4; 1935, c. 356, s. 6; 1939, c. 231, s. 3.)

Cross References.—As to what the ordinance must show when a municipality issues bonds, see § 160-379; when a county issues bonds, see § 153-78.

Editor's Note.—The 1935 amendment inserted subsections (9) and (10) of this section. The 1939 amendment struck out "incurred before July 1, 1933," formerly appearing after "indebtedness" in the first paragraph.

Provision Becoming Part of Bonds.—A provision set out in this section and incorporated in an ordinance authorizing the issuance of bonds will enter into and become an integral part of the bonds when issued, with contractual force and effect, which may not be impaired by subsequent legislation. Nash v. Board of Com'rs, 211 N. C. 301, 190 S. E. 475 (1937).

§ **159-47. Issuance by local units of new bonds to replace mutilated bonds and bonds registered as to both principal and interest.**—In case any bond heretofore or hereafter issued by any unit has heretofore or shall hereafter become mutilated or has heretofore or shall hereafter be registered as to both principal and interest, the governing body of the unit may by resolution provide for the issuance of a new bond in exchange and substitution for and upon the cancellation of the mutilated bond and its interest coupons, if any, or the bond registered as to both principal and interest. The provisions of such resolution must be approved by the Local Government Commission before any exchange shall be made thereunder. In all such cases the holder shall pay the reasonable expenses and charges of the unit and of the Commission in connection with such exchange. Such new bond shall mature at the same time and bear interest at the same rate as the bond in exchange for which it shall be issued, and shall be executed in such manner as may be provided in the resolution providing for the issuance of the new bond. Each such new bond shall be signed by the officers who are in office at the time of such signing, and shall contain a recital to the effect that it is issued in exchange for a certain bond (describing such bond sufficiently to identify it) and is to be deemed a part of the same issue as the original bond. (1939, c. 259.)

§ **159-48. Cancellation of own bonds, etc., acquired by unit.**—Any bonds or other evidences of indebtedness issued by a unit which have heretofore been or may hereafter be acquired by said unit, unless so acquired for investment of sinking funds of said unit, shall be immediately cancelled and extinguished as obligations of said unit. It shall be the duty of any officer or employee of said unit in whose possession or custody said bonds or other evidences of indebtedness are placed to cancel the same as herein provided and to promptly report such cancellation to the Local Government Commission and furnish in said report a full description of the bonds or other evidences of indebtedness so cancelled. (1939, c. 356.)

§ **159-49. State not liable for debts of units nor units for obligations of each other.**—Nothing herein contained shall be construed to bind the State of North Carolina to pay any part of any debt due by any county, municipality or other unit of government, nor shall it be construed that any county or other unit shall be liable for the debts of any other county or unit. (1931, c. 60, s. 77.)

§ **159-49.1. Investment of unused proceeds of sale of bonds by counties, cities and towns in designated securities.**—If for any reason the whole or any part of the proceeds of the sale of bonds heretofore issued by a county, city or town cannot be applied to the purpose for which such bonds were authorized, such proceeds may be invested in either bonds, notes or certificates of indebtedness of the United States of America, or in bonds or notes of any agency or instrumentality of the United States of America the payment of principal and interest of which is guaranteed by the United States of America, or in bonds or notes of the State of North Carolina, or in bonds of any county, city or town of North Carolina which have been approved by the Local Government Commission for the purpose of such investment. Nothing in this section shall be construed as permitting moneys from realization of such investment, by sale or by payment, to be applied to any purpose other than that now authorized by law, except that such moneys may be reinvested in the bonds, notes or certificates of indebtedness herein provided for investment. Earnings from such investment may be applied to payment of the interest or principal of the bonds from which such proceeds were derived or may be applied as increment to such proceeds. (1943, c. 14.)

Editor's Note.—For comment on this section, see 21 N. C. Law Rev. 357.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ **159-49.2. Investment of bond proceeds pending use.**—When the proceeds of any bonds heretofore or hereafter sold by any county, city or town, shall not be needed for a period of not less than ninety days to meet contractual or other obligations in connection with the purposes for which such bonds were issued, such county, city or town may, with the prior approval of the Local Government Commission, invest the proceeds of such bonds not so needed in the securities listed in § 159-49.1; provided, the maturities of such securities conform to the date or dates such county, city or town will need the moneys so invested. (1949, c. 858.)

Article 2.

Validation of Bonds, Notes and Indebtedness of Unit.

§ **159-50. "Unit" defined.**—In this article the word "unit" means a county, city, town, township, school district, school taxing district, or other district or political subdivision of government of the State. (1931, c. 186, s. 1.)

Cited in Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ **159-51. Validation of bond and note issues by units.**—In all cases where a unit has issued its bonds or notes prior to March 26, 1931, and has received for the bonds or notes an amount of money not less than the face amount of the bonds or notes, and has expended said money for public purposes, said bonds or notes are hereby validated, and all bonds or notes subsequently issued to pay or renew said bonds or notes are also hereby validated, notwithstanding any lack of statutory authority or failure to observe any statutory provision concerning the issuance of such bonds or notes. This section shall not be construed as validating any bonds or notes, the proceeds of which have been lost by reason of the failure of any bank. (1931, c. 186, s. 2.)

§ **159-52. Test cases testing validity of funding bonds.**—At any time after the adoption of an ordinance, resolution, or order for the issuance of refunding or funding bonds of a unit by the board authorized by law to issue the same, and following the approval of the issuance of such bonds by the Local Government Commission, and prior to the issuance of any such bonds, such board may cause to be instituted in the name of the unit an action in the superior court of any county in which all or any part of the unit lies, to determine the validity of such bonds and the validity of the means of payment provided therefor. Such action shall be in the nature of a proceeding in rem, and shall be against each and all the owners of taxable property within the unit and each and all the citizens residing in the unit, but without any requirement that the name of any such owner or citizen be stated in the complaint or in the summons. Jurisdiction of all parties defendant may be had by publication of a summons once a week for three successive weeks in some newspaper of general circulation published in each county in which any part of the unit lies, and jurisdiction shall be complete within twenty days after the date of the last publication of such summons in the manner herein provided. Any interested person may become a party to such action, and the defendants and all others interested may at any time before the expiration of such twenty days appear and by proper proceedings contest the validity of the indebtedness to be refunded or funded or the validity of such refunding or funding bonds or the validity of the means of payment provided therefor. The complaint shall set forth briefly by allegations, references, or exhibits the proceedings taken by such board in relation to such bonds and the means of payment provided therefor, and, if an election was held to authorize such issuance, a statement of that fact, together with a copy of the election notice and of the official canvass of votes and declaration of the result. There shall similarly be set forth in the complaint a statement of the amount, purpose, and character of the indebtedness to be refunded or funded, and such other allegations as may be relevant. The prayer of the complaint shall be that the court find and determine as against the defendants the validity of such bonds and the validity of the means of payment so provided. (1931, c. 186, s. 4; 1935, c. 290, s. 1; 1937, c. 80.)

Editor's Note.—This section was rewritten by the 1935 amendment. The 1937 amendment substituted "date of the last" for "full" formerly appearing in the third sentence.

The action authorized by this and the following four sections is in the nature of a proceeding in rem, and is adversary both in form and in substance. These sections contemplate that issues both of law and of fact may be raised by pleadings duly filed, and that such issues shall be determined by the court. The court has no power by virtue of these sections to validate bonds which are for any reason invalid. It has power only to determine whether or not on the facts as found by the court and under the law applicable to these facts, the bonds are valid. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

Service of Summons by Publication Is Sufficient.—The contention that an owner of taxable property within the unit, or a citizen residing therein, may be deprived of his property, without due process of law, or contrary to the law of the land, by a decree or judgment in the action declaring or adjuging that the bonds and tax to be levied for their payment, are valid, because it is not required by this section that his name shall appear in the summons or in the complaint, or that the summons shall be served on him personally, cannot be sustained. The action is declared by this section to be in the nature of a proceeding in rem. In such case, all persons included within a well defined class may be made parties defendant, and service of summons by publication is sufficient, although such persons are not named in the summons. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

If Published as Required by This Section.—See Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ **159-53. Rules of pleading and practice.**—The trial of such action shall be in accordance with the Constitution and laws of the State; and the rules of pleading and practice provided by the General Statutes and court rules for civil actions, including the procedure for appeals, which are not inconsistent with the provisions of this article, are hereby declared applicable to all actions herein provided for: Provided, however, that an appeal from a decree in such action must be taken within thirty days from the date of rendition of such decree. The court shall render a decree either validating such bonds and the means of payment provided therefor, or adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal. (1931, c. 186, s. 5; 1935, c. 290, s. 2.)

Editor's Note.—The 1935 amendment inserted the proviso at the end of the first sentence, and substituted "a decree" for "judgment" near the beginning of the second sentence.

§ **159-54. Judgment establishing validity of issue.**—If (i) the superior court shall render a decree validating such bonds and the means of payment provided therefor and no appeal shall be taken within the time prescribed herein, or (ii) if taken, the decree validating such bonds and the means of payment provided therefor shall be affirmed by the Supreme Court, or (iii) if the superior court shall render a decree adjudging that such bonds and the means of payment provided therefor are, in whole or in part, invalid and illegal, and on appeal the Supreme Court shall reverse such decree and sustain the validity of such bonds and the means of payment provided therefor (in which case the Supreme Court shall issue its mandate to the superior court requiring it to render a decree validating such bonds and the means of payment provided therefor), the decree of the superior court validating such bonds and the means of payment provided therefor shall be forever conclusive as to the validity of such bonds and the validity of the means of payment provided therefor as against the unit and as against all taxpayers and citizens thereof, to the extent of matters and things pleaded or which might have been pleaded, and to such extent the validity of said bonds and means of payment thereof shall never be called in question in any court in this State. (1931, c. 186, s. 6; 1935, c. 290, s. 3.)

Editor's Note.—The 1935 amendment rewrote this section.

Section Does Not Estop Taxpayer from Challenging Validity of Bonds if Service Inadequate.—The contention that by this section an owner of taxable property within the unit, or a citizen residing therein, is estopped from challenging the validity of the bonds and of the tax, without having had an opportunity to be heard, cannot be sustained. No decree or judgment adverse to his rights can be rendered in an action instituted and prosecuted in accordance with the provisions of the statute, until every taxpayer and citizen of the unit has been lawfully served with summons, and until he has had ample opportunity to appear and file such pleadings as he may wish. If he has failed to avail himself of his constitutional rights, which are fully protected by the statute, he has no just ground of complaint that the court will not hear him when he invokes its aid after the decree or judgment has been finally rendered, and others have relied upon its protection. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ **159-55. Taxing costs.**—The costs in any action brought under this article may be allowed and apportioned between the parties or taxed to the losing party, in the discretion of the court. (1931, c. 186, s. 7.)

§ **159-56. Levying special tax for proposed issues.**—If the complaint in any action brought under this article, or an exhibit attached to such complaint shows that an ordinance or resolution has been adopted by the unit providing that a tax sufficient to pay the principal and interest of the bonds or notes involved in such action is to be levied and collected, such ordinance or resolution shall be construed as meaning that such tax is to be levied without regard to any constitutional or statutory limitation of the rate or amount of taxes, unless such ordinance or resolution declares that such limitation is to be observed in levying of such tax. (1931, c. 186, s. 8.)

Constitutionality.—This section and the four preceding sections are not unconstitutional either on the ground that the statute confers nonjudicial functions on the superior courts or on the ground that the statute denies due process of law to taxpayers or citizens of a local governmental unit, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or of the 17th section of Article I of the Constitution of North Carolina. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

§ **159-57. Notice of proposed issue to be published by unit.**—Any unit may by resolution of the official board of such unit, authorized by law to issue bonds or notes, cause to be published a notice of the intention of said board to issue bonds or notes of the unit for the purpose of funding, refunding or renewing outstanding obligations or alleged obligations issued prior to passage of such resolution. Such notice shall describe said obligations or alleged obligations in a manner sufficient to identify them. It shall also state, either in general or specific terms, the purpose or purposes for which said outstanding obligations were incurred or issued, as determined by said official board of said unit prior to the publication of said notice. Said notice shall further state that a tax is to be levied on all taxable property in the unit sufficient to pay the bonds or notes proposed to be issued, or any bonds or notes that may be subsequently issued for the purpose of refunding, funding, renewing or paying said bonds or notes. Said notice shall be published once in each of three successive weeks in a newspaper published in the unit having the largest or next largest circulation in the unit, or if no newspaper is there published, then in a newspaper published in the county in which the unit is located, if any, and if there be no such newspaper such notice shall be posted at the door of the courthouse or building where said official board usually holds its meetings, and published in some newspaper published in the State of North Carolina and circulating in said unit. Such notice shall contain a statement that it is being published under the provisions of this section. After the issuance of any bonds or notes in accordance with the intention expressed in said notice, the validity of said bonds or notes and/or of any subsequently issued instruments evidencing the same indebtedness, shall not be open to question in any court upon the ground that any of the obligations or alleged obligations for the funding or renewal of which such bonds or notes were issued, were or are invalid, nor shall the power of the unit to levy a sufficient tax on all taxable property in the unit for the payment of the principal and interest of said bonds or notes, or of any subsequently issued instruments evidencing the same indebtedness, be open to question in any court upon the ground that the obligations or alleged obligations for the funding or renewal of which said bonds or notes were issued were invalid, or upon the ground that said original obligations or alleged obligations were not issued for a purpose for which such tax can be levied, except in an action or proceeding commenced within thirty days after the first publication of said notice of intention. The date of such first publication shall be stated in said notice. (1931, c. 186, s. 9; 1935, c. 290, s. 4.)

Editor's Note.—Prior to the 1935 amendment this section applied only until July, 1932, and the outstanding obligations were those issued since March 1, 1929. The amendment makes the section general and permanent in its application. Prior to the amendment, it was required that a copy of the section be posted with the notice. Now a statement that notice is being published according to the section is all that is required. Prior to the amendment the purposes of levy could be attacked by an action "commenced at least two days prior to the issuance of said bonds or notes." The quoted passage was deleted by the amendment.

§ **159-58. Invalidated issues unaffected.**—This article shall not apply to any bonds or notes that have been held invalid by any court of competent jurisdiction. (1931, c. 186, s. 11.)

Article 3.

Funding and Refunding of Debts of Local Units Other than Counties, Cities and Towns.

§ **159-59. Local units, other than counties, cities and towns, authorized to fund outstanding debts.**—Any unit other than a county, city or town may issue bonds as provided in this article for the purpose of funding or refunding any or all of its matured or unmatured notes or bonds, or the interest accrued thereon. The word unit as here used means a township, school district, school taxing district, road district, drainage district, sanitary district, water district, political subdivision or local governmental agency. The notes and bonds hereby authorized to be funded or refunded include notes and bonds issued in the name of a county, but payable from taxes levied in a township, school district or other unit embracing only a part of the territory of the county. (1933, c. 257, s. 1; 1939, c. 231, s. 4.)

Editor's Note.—The 1939 amendment struck out "provided, the indebtedness evidenced by said notes or bonds was incurred before July 1, 1933," formerly appearing at the end of the first sentence.

§ **159-60. General law applicable.**—Bonds issued pursuant to this article shall be issued in accordance with the provisions of the County Finance Act, as amended, relating to the issuance of funding and refunding bonds under that act, except in the following respects, viz.:

(1) They shall be issued in the name of the obligor named in the obligations to be funded or refunded, or in the name of the successor to the obligor named in the obligation to be refunded or funded;

(2) They shall be issued by or on behalf of the unit by the same board or body which issued the obligations to be funded or refunded, or its successor, or, if said board or body is no longer in existence, by the board of county commissioners or other governing body of the county in which the unit, or the major portion of the unit, is situated;

(3) It shall not be necessary to include in the order or resolution authorizing the bonds, or in the notice required to be published prior to final passage of the order or resolution, any statement concerning the filing of a debt statement, or the contents thereof; and, as applied to said bonds, §§ 153-78, 153-83, 153-84, 153-85, 153-86 and 153-87 of the County

Finance Act, shall be read and understood as if they contained no requirements in respect to such matters;

(4) The bonds shall mature at such time or times, not later than forty years after their date, as may be fixed or provided for in the resolutions under which they are issued;

(5) The bonds shall also be issued in accordance with the provisions of the Local Government Act, as amended. (1933, c. 257, s. 2; 1935, c. 484; 1941, c. 147.)

Editor's Note.—The 1935 amendment added the part of subdivision (1) beginning with "or in the name of." The 1941 amendment rewrote subdivision (5).

§ **159-61. Taxes to pay new obligations authorized.**—Taxes for the payment of the principal and interest of bonds issued pursuant to this article shall be levied by the board or body authorized by existing law to levy taxes for the payment of the obligations funded or refunded by said bonds, and shall be levied only in the territory subject to taxation for the payment of the obligations so funded or refunded. (1933, c. 257, s. 3.)

§ **159-62. County Finance Act applicable.**—Except where they are inconsistent with the provisions of this article, all of the provisions of the County Finance Act, as amended, applicable to bonds issued under that act for the funding or refunding of indebtedness, shall be applicable to bonds issued under this article. For the purpose of applying the provisions of said act to bonds issued under this article, the following words and phrases in said act shall be deemed to have the following meanings when applied to said bonds, viz.: "Governing body" means the board or body authorized by this article to issue bonds, except the words "governing body" in § 153-110 of the County Finance Act, where said words mean the board or body authorized by this article to levy taxes; "county" means the unit by or on behalf of which the bonds are to be issued under this article; "published" means published in a newspaper published in a county in which such unit is situated, if there be such a newspaper, but otherwise means posted at the courthouse door of said county and at least three other public places; "clerk of board of commissioners" means the clerk or secretary of the board or body authorized by this article to issue bonds; "this act" means this article. (1933, c. 257, s. 4; 1939, c. 231, s. 4(b).)

Editor's Note.—The 1939 amendment struck out "incurred before July 1, 1933," formerly appearing after "indebtedness" in the first sentence.

ARTICLE 4.

Assistance for Defaulting Local Government Units in the Preparation of Workable Refinancing Plans.

§ **159-63. Aid of Director of Local Government to defaulting local units.**—Whenever it shall appear that any county, city, town, or other local government unit of this State has defaulted for a period of six months in the payment of the principal or interest of any of its outstanding notes or bonds, the Director of Local Government is hereby given the authority to prepare and certify to the governing body of such local government unit a plan for refinancing, readjustment, or compromising said debt in order to remove the default and prevent its recurrence. (1935, c. 124, s. 1.)

§ **159-64. Investigating fiscal affairs of units; negotiations with creditors; plans for refinancing or readjustment.**—For the purpose of determining the financial position, the Director of Local Government may make or cause to be made an investigation of the fiscal affairs of such units which are in default in the payment of principal or interest for a period of six months, and advise with the governing body of such unit regarding the refinancing and/or readjustment of its debts, and is authorized to negotiate with the creditors of such units for the purpose of reaching an agreement with them. Whenever a plan of refinancing and/or readjustment, whether prepared by the Director, by a private refunding agency, or by the officials of the unit, appears to the Director of Local Government as being fair and equitable and reasonably within the ability of such unit to meet, it shall be submitted by him to the Local Government Commission for its approval, and upon such approval, the governing body of such local government unit shall adopt same and pass the necessary orders or ordinances for the purpose of carrying said plan into effect. (1935, c. 124, s. 2.)

§ **159-65. Power of Director to accept or reject budget of local units.**—In order to conserve the financial resources of any local government unit of this State and to provide a means of constant advisory services, the Director of Local Government is hereby given authority to approve or disapprove the budget of any unit which has accepted the plan and put same into effect, and the governing body of such unit shall first obtain the approval of the said Director before passing any order or ordinance adopting said budget. (1935, c. 124, s. 3.)

§ **159-66. Annual statements from units.**—The Director of Local Government shall have authority to require of the local units in which he functions under this article annual statements showing the collection of revenues and the disbursements for expenses, both divided as between general operating fund, debt service fund, and special funds, if any, and it shall be his duty to require the proper allocation of all collected revenues to the funds for which said revenues were levied, in accordance with the budget, and to require that disbursements shall be made only from appropriations duly made. (1935, c. 124, s. 4.)

§ **159-67. Extent and time limit of Director's authority.**—The authority hereby granted to the Director of Local Government shall continue in force in such local government units until, in the discretion of the Director of Local Government, said local government unit has performed the duties required of it or has satisfied the Director that it will do so, until the agreements made with the creditors have been discharged in accordance with the plan of refinancing and/or readjustment of its debt. (1935, c. 124, s. 5.)

§ **159-68. Certain local laws reserved.**—Nothing in this article shall be construed to repeal any public-local or private act passed by the General Assembly of one thousand nine hundred and thirty-five, relative to the readjustment or refunding of the bonded indebtedness of any local governmental unit in North Carolina, except and until an agreement has been reached between the bondholders and the governing body of said unit, and when said agreement has been reached and certified to the Director of the Local Government Commission by both contracting parties, then and in that event the provisions of said article shall apply to such defaulting local governmental units. (1935, c. 124, s. 6.)

Chapter 160.

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SUBCHAPTER I. REGULATIONS INDEPENDENT OF ACT OF 1917.

Article 1.

General Powers.

§ 160-1. Body politic.—Every incorporated city or town is a body politic and corporate, and shall have the powers prescribed by statute, and those necessarily implied by law, and no other. (Code, s. 702; Rev., s. 2915; C. S., s. 2622.)

Editor's Note.—For case law survey on municipal corporations, see 41 N. C. Law Rev. 494.

Powers.—A municipal corporation is a political subdivision of the State and can exercise only such powers as are granted in express words, or those necessary or fairly implied or incident to the powers expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation. Stephenson v. Raleigh, 232 N. C. 42, 59 S. E. (2d) 195 (1950).

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, and the powers granted in the charter will be construed together with those given under the General Statutes. Laughinghouse v. New Bern, 232 N. C. 596, 61 S. E. (2d) 802 (1950); Starbuck v. Havelock, 252 N. C. 176, 113 S. E. (2d) 278 (1960).

A municipal corporation is a creature of the General Assembly and has no inherent power but can exercise such powers as are expressly conferred by the General Assembly or such as are necessarily implied by those expressly given. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

Same—Discretion as to Accomplishment of Purposes.—A municipal corporation has only those powers expressly granted in its charter and by the general law, construing the acts together, and those powers reasonably implied in or incident to the granted powers which are necessary to effect the fair intent and purpose of its creation, and it may exercise a sound discretion as to the means by which the purposes of its creation may be accomplished. Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. (2d) 542 (1939).

Same—Outlay of Tax Revenues.—A municipality is a creature of the State and has "the powers prescribed by the statute, and those necessarily implied by law, and no other," therefore a city or town cannot make a rightful outlay of its tax revenues unless the outlay is explicitly or implicity authorized by a statute conforming to the Constitution. Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950); Wilson v. High Point, 238 N. C. 14, 76 S. E. (2d) 546 (1953).

The implied powers of a municipality are those which are necessarily or fairly implied in or incident to the powers expressly granted, or essential to the accomplishment of the purposes of the corporation. Green v. Kitchin, 229 N. C. 450, 50 S. E. 545 (1948). For a leading article on this case, see 27 N. C. Law Rev. 500.

A municipal corporation has no authority to waive its immunity from tort liability in performance of its governmental functions. Stephenson v. Raleigh, 232 N. C. 42, 59 S. E. (2d) 195 (1950).

Quoted in Dennis v. Raleigh, 253 N. C. 400, 116 S. E. (2d) 923 (1960).

Cited in Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938); Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ 160-2. Corporate powers.—A city or town is authorized:

(1) To sue and be sued in its corporate name.

Cross References.—As to venue of an action against a municipality, see § 1-77 and note. As to necessity of demand before suit against a municipality, see § 153-64. As to time within which an action against a municipality must be brought, see § 1-53.

In General.—A town must be sued in its corporate name and not in the name of its officers. Young v. Barden, 90 N. C. 424 (1886).

How Served with Summons.—A summons against a city may be served on the mayor and on the secretary of the board of aldermen. Loughran v. Hickory, 129 N. C. 281, 40 S. E. 46 (1901).

Form of Action.—As a general rule, whenever a good cause of action exists against a municipal corporation, it may be prosecuted by an action in whatever form would be appropriate against an individual. The creditor is not limited to an action by mandamus. Winslow v. Commissioners, 64 N. C. 218 (1870).

Venue in County Where Municipality Located.—Cities and towns must be sued in the county in which they are located, and if suit is brought in another county, they have the right to have it removed. Jones v. Statesville, 97 N. C. 86, 2 S. E. 346 (1887). See § 1-77 and note.

Action in Name of All Citizens against City.—In an action against a municipal corporation to enjoin the collection of an illegal tax, it is not error to allow all citizens other than the original plaintiff to be made parties plaintiff. Cobb v. Elizabeth City, 75 N. C. 1 (1876).

Stated in Cannon v. Wilmington, 242 N. C. 711, 89 S. E. (2d) 595 (1955).

(2) Out of any funds on hand, and without creating any debt, to purchase and hold real estate for the use of its inhabitants.

Cross References.—As to power to dispose of property, see §§ 160-59 through 160-61.1. As to power to establish markets, see §§ 160-53 and 160-228. As to power to acquire property, see §§ 160-204 through 160-221.

Erection of Public Building.—The erection by a city of a public building with funds for the purpose on hand, for governmental offices, academy of music, public meetings, etc., is for a governmental purpose, and within the exercise of the discretionary powers conferred upon the governing body of the municipality, and where no further expense may be incurred such as to pledge the credit of the city, or therein impose an obligation upon it, there is no violation of our Constitution, Art. VII, § 7. Adams v. Durham, 189 N. C. 232, 126 S. E. 611 (1925).

(3) To purchase and hold land, within or without its limits, for cemetery purposes and to prohibit burial of persons at any other place in town and to regulate the manner of burial in municipal cemeteries. All municipal corporations purchasing real property at any trustee's, mortgagee's, or commissioner's sale or execution or tax sale shall be entitled to a conveyance therefor from the trustee, mortgagee or other person or officer conducting such sale, and deeds to such municipal corporations or their assigns shall have the same force and effect as conveyances to private purchasers. The provisions of this subsection shall apply to such sales and conveyances as may have been heretofore made by the persons and officers herein mentioned.

Cross References.—See also, § 160-200, subdivision (36). As to care of cemeteries, see §§ 160-258 to 160-260.2.

Editor's Note.—The 1959 amendment rewrote the first sentence of subdivision (3) as changed by the 1927 and 1955 amendments.

City's Power over Interment.—The ownership of a lot in a cemetery, or license to inter therein, is subject to the police power of the State, and interments may be forbidden, and bodies already interred removed, by ordinance of the city, if authorized by act of the legislature. Humphrey v. Board, 109 N. C. 132, 13 S. E. 793 (1891).

Relief to Taxpayers When Section Violated.—Where the proper authorities of a city had purchased lands for a negro cemetery in excess of the fifty acres formerly allowed by subdivision (3), in good faith, to meet a necessary need therefor, and at a reasonable price, and had paid therefor and accepted a deed from the owners, injunctive relief at the suit of the taxpayers was denied. Harrison v. New Bern, 193 N. C. 555, 137 S. E. 582 (1927).

Ordinance Not Authorized.—This subsection does not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

The title of the purchaser at a tax foreclosure sale may not be challenged by the listed owner upon the purchaser's motion for a writ of assistance, and such purchaser may be a municipality where it does not appear of record that the purchase of the land was ultra vires, a municipality having the power to purchase land for certain purposes under this section. Wake County v. Johnson, 206 N. C. 478, 174 S. E. 303 (1934).

(4) To make such contracts, and purchase and hold such personal property as may be necessary to the exercise of its powers.

Cross References.—As to power to establish a library, see § 160-65. As to water and lights, see § 160-255 et seq. As to sewerage, see § 160-239 et seq. As to fire protection, see § 160-235. As to letting contracts for construction, etc., see § 143-129 et seq. As to contractor on municipal building giving bond, see § 44-14.

(5) To make such orders for the disposition or use of its property as the interest of the town requires.

Local Modification.—City of Reidsville: 1949, c. 323; City of Rocky Mount: 1955, c. 499, s. 4; city of Statesville: 1955, c. 593.

Cross References.—As to sale of municipal property, see §§ 160-59 to 160-61.1. As to reconveyance of property donated to municipality for a specific purpose, see § 153-3.

Power to Cede Away or Control Public Affairs.—Municipal corporations may make authorized contracts, but they have no power under this section to make contracts or pass bylaws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties. The receipt of $600 from a citizen in consideration of locating certain public buildings near his property so as to enhance the value is such a contract. Edwards v. Goldsboro, 141 N. C. 60, 53 S. E. 652 (1906).

(6) To grant upon reasonable terms franchises for public utilities, such grants not to exceed the period of sixty years, unless renewed at the end of the period granted; also to sell or lease, upon such conditions and with such terms of payment as the city or town may prescribe, any waterworks, lighting plants, gas or electric, or any other public utility which may be owned by any city or town: Provided, that in the event of such sale or lease it shall be approved by a majority of the qualified voters of such city or town; and also to make contracts, for a period not exceeding thirty years, for the supply of light, water or other public commodity.

Editor's Note.—The second 1921 amendment inserted the provision for conditions and terms, and the 1933 amendment struck out a provision that the subsection should not appy to Cumberland County.

Although the Utilities Commission is the principal agency for regulation of electricity rates in North Carolina, the municipalities still can, if they will, play an important part in view of this section. See 12 N. C. Law Rev. 294.

The sovereign right to franchise implies the power to control for public benefit, including among other things, the right to fix reasonable rates and to specify where the franchise may or may not be exercised so as to afford adequate service to the public. Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

Discretion of Local Body.—The terms and conditions upon which franchises to public utilities are to be granted, unless clearly unreasonable or expressly prohibited by law, rests in the sound discretion of the local body. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Statutory Term Read into Contract.—Where a franchise granted by a municipality fails to stipulate a term, the statutory term of sixty years will be read into the contract as a part thereof. Boyce v. Gastonia, 227 N. C. 139, 41 S. E. (2d) 355 (1947).

Every town has the power to grant franchises to public utilities under this subsection; that is, the right to engage within the corporate boundaries in business of a public nature. Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

In Granting Franchise Municipality Exercises Governmental Function.—In the granting of a franchise to a public utility to operate a system for furnishing gas for cooking and heating to residents of the municipality, the municipality exercises a governmental function, and may not be held liable in tort to a person injured by a gas explosion, even if it be conceded that the city was negligent in continuing the franchise after the pipe lines and equipment of the licensee had become defective. Denning v. Goldsboro Gas Co., 246 N. C. 541, 98 S. E. (2d) 910 (1957).

Additional Tax Not Authorized.—Construing this subsection, in pari materia with § 105-120 (f), it becomes clear that no authorization of additional tax was intended by this subsection. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Franchises for Use of Streets Must Be Expressly Conferred.—"The law is well settled that the title either of the fee in the soil or an easement is vested in the municipality, in trust for the use of the people as and for a public highway, and that it cannot, without legislative authority, divert them from this use." Therefore a grant by a city of a franchise allowing gas pipes to be laid in its streets is void unless allowed by express legislation.

Elizabeth City v. Banks, 150 N. C. 407, 64 S. E. 189 (1909).

Duty Imposed with Franchise to Water Company.—The acceptance of a municipal franchise by a water company carries with it the duty of supplying water to all persons along the lines of its mains without discrimination and at uniform rates. Griffin v. Goldsboro Water Co., 122 N. C. 206, 30 S. E. 319 (1898).

Same—Power to Repudiate.—A water company operating under a franchise-contract from a city or town, and receiving the benefits and advantages arising thereunder, may not repudiate the duty of supplying water free to public schools, etc., which it had expressly contracted to do in accepting the franchise containing such provision, and collect for water it had furnished them upon a quantum meruit or otherwise. Henderson Water Co. v. Trustees, 151 N. C. 171, 65 S. E. 927 (1909).

Rights of Abutting Owners.—As against the rights of abutting owners the municipal authorities have no power to grant to a railroad company an easement to lay its track upon and operate its trains over the streets of a town, even though the title to the streets be in the town. Staton v. Atlantic Coast Line R. Co., 147 N. C. 428, 61 S. E. 455 (1908).

Exclusive Privilege Unconstitutional.—Those provisions of an ordinance granting the exclusive privilege to construct and maintain waterworks within the corporate limits of a town, and the exclusive use of its streets, alleys, sidewalks, public grounds, streams and bridges, come within the confirmation of § 31, of Art. I, of the Constitution of this State, which declares that "perpetuities and monopolies are contrary to the genius of a free state and ought not be allowed." Thrift v. Elizabeth City, 122 N. C. 31, 30 S. E. 349 (1898).

License Not a Permanent Easement.—A license granted by a city to a railroad company to lay a track upon and to that extent use the streets, in the absence of an express power in the charter to do so, such license cannot be construed into a grant of a permanent easement. State v. Atlantic & N. C. R. Co., 141 N. C. 736, 53 S. E. 290 (1906).

Power to Annul License to Street Railroad.—After a city, by ordinance, has granted a street railroad a right to construct its line over certain streets it cannot by subsequent ordinance arbitrarily annul such license. Asheville St. Ry. Co. v. Asheville, 109 N. C. 688, 14 S. E. 316 (1891).

Private Sale of Property Held for Public Use.—The provision of § 160-59 in regard to sale at public outcry is not applicable to sales under this section, and when the approval of the voters is had there may be a private sale of such property as is included in the provision of this section. Section 160-59 is not applicable to property held in trust, Church v. Dula, 148 N. C. 262, 61 S. E. 639 (1908), and it was for a sale of such property that this section was especially intended. See Allen v. Reidsville, 178 N. C. 513, 101 S. E. 267 (1919).

When Approval of Voters Not Required.—Where a municipality decides to abandon the generation of electricity by the use of Diesel engines and substitute therefor electricity purchased wholesale for distribution through its electric plant, and in pursuance of such change of policy, advertises a sale of Diesel engines under § 160-59, there is no sale by such municipality of its electric plant requiring approval of a majority of the qualified voters under this section. Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Cited in Wishart v. Lumberton, 254 N. C. 94, 118 S. E. (2d) 35 (1961).

(7) To provide for the municipal government of its inhabitants in the manner required by law.

Cited in State v. Vanhook, 182 N. C. 831, 109 S. E. 65 (1921).

(8) To levy and collect such taxes as are authorized by law.

Cross Reference.—As to municipal taxation, see § 160-56 et seq.

(9) To do and perform all other duties and powers authorized by law.

Cross References.—As to authority of municipalities to co-operate in planning, constructing, and operating housing projects, see § 157-40 et seq. As to duty of governing body in city of over 10,000 to establish a juvenile court, see § 110-44. As to power to establish and maintain meat inspection, see § 106-161. As to power to contribute toward erection of memorials, see § 100-10. As to power to appropriate money for joint county and municipal hospitals, see § 131-46. As to power to make rules and regulations concerning motor vehicles, see § 20-169. As to authority to lease, convey or acquire property for use as armory, see § 143-235. As to appropriations for benefit of military units, see § 143-236.

Can Only Exercise Conferred Power.—A municipality has no inherent police powers, but can exercise only those conferred by the State, and any reasonable doubt concerning such powers is resolved against it. State v. Dannenberg, 150 N. C. 799, 63 S. E. 946 (1911).

Parking Fee.—Prior to the 1941 amendment of § 160-200, subdivision (31), it was held that this section did not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

(10) To establish, erect, repair, maintain and operate a city or town jail or guardhouse, and to raise by taxation the moneys necessary therefor.

Editor's Note.—The 1949 amendment added subdivision (10). For brief comment on amendment, see 27 N. C. Law Rev. 473.

(11) To apportion between existing municipal voting units, wards, precincts, or districts, newly annexed areas not so apportioned in the act of annexation. This apportionment shall be effective as of the date of annexation of the territory. Apportionments heretofore made are hereby ratified and confirmed. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P. L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308.)

Editor's Note.—The 1961 amendment added subdivision (11).

§ **160-3. How corporate powers exercised.**—The corporate powers can be exercised only by the board of commissioners, or in pursuance of resolutions adopted by them, unless otherwise specially provided by law. (Code, s. 703; Rev., s. 2917; C. S., s. 2624.)

Cross Reference.—As to exercise of powers by governing body, see § 160-267 et seq.

Majority of Those Present May Validate Ordinance.—If an act is to be done by an incorporated body, the law resolution or ordinance authorizing it to be done is valid if passed by a majority of those present at a legal meeting. Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 13 S. E. 271 (1891); LeRoy v. Elizabeth City, 166 N C. 93, 81 S. E. 1072 (1914).

§ **160-4. Application and meaning of terms.**—This subchapter shall apply to all incorporated cities and towns where the same shall not be inconsistent with special acts of incorporation, or special laws in reference thereto, and the word "commissioners" shall also be construed to mean "aldermen," or other governing municipal authorities. The sections relating to municipal or town elections shall apply to all cities and towns not expressly excepted by law. (R. C., c. 111, s. 23; Code, s. 3827; Rev., s. 2918; C. S., s. 2625.)

Cross Reference.—As to application of Municipal Corporation Act of 1917, see § 160-193.

General Law Applies if Not Inconsistent with Special Law or Charter.—A general law applies to all towns and cities in the State if it is not inconsistent with some special law or the charter of a town or city. State v. Smith, 103 N. C. 403, 9 S. E. 435 (1889).

Inconsistent Laws—Which Prevails.—The general law holds in the absence of special laws. In case of special laws the general law is repealed only to the extent of a conflict. If there is no conflict the two may be construed in pari materia. Raleigh v. Peace, 110 N. C. 32, 14 S. E. 521 (1892).

Stated in Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942).

§ **160-4.1. Estimate of municipal population authorizing participation in State-collected funds.**—Whenever a municipality of the State of North Carolina is not included in the last federal decennial census by reason of its being unincorporated at the time said census was taken and certified, said municipality becoming incorporated after such census shall be entitled to participate in all State-collected funds allocated to the local units of governments of the State by filing with the department or agencies of the State government charged with the responsibility of distributing such funds an estimate of the population of such municipality. Such estimate shall be approved by the governing body of the municipality and by the county board of commissioners of the county wherein such municipality is located. And when so approved the estimate of the population shall be the official census of said municipality until the next federal decennial census is released. All departments or agencies of the State government charged with the responsibility of distributing such funds are hereby authorized and directed to accept such estimate of population in distributing and allocating such funds. (1953, c. 79.)

Cross Reference.—As to allocation of funds to municipalities, see § 136-41.2.

Article 2.

Municipal Officers.

Part 1. Commissioners.

§ **160-5. Number and election.**—The board of commissioners of each town shall consist of not less than three nor more than seven commissioners, who shall be biennially elected by the qualified voters of the town, at the time and in the manner prescribed by law. (R. C., c. 111, s. 1; Code, s. 3787; Rev., ss. 2917, 2919; C. S., s. 2626.)

Cross References.—As to number of commissioners, see §§ 160-198, 160-310, 160-317, and 160-340. As to the general election laws, see § 163-148 et seq. As to municipal elections, see § 160-29 et seq.

§ **160-6. Number may be changed.**—After the first election the voters of any town may, whenever and as often as they choose, at the time of electing commissioners, and after due notice given thereof by the commissioners then in authority, by a majority of all the votes cast, alter the number of commissioners, so that the number be not more than seven nor less than three; and thenceforth the number of commissioners agreed on shall be chosen. (R. C., c. 111, s. 7; Code, s. 3791; Rev., s. 2922; C. S., s. 2627.)

§ **160-7. Oath of office.**—The commissioners shall take and subscribe an oath before some person authorized by law to administer oaths that they will faithfully and impartially discharge the duties of their office, and such oaths shall be filed with the mayor of such town and entered in a book kept for that purpose. (R. C., c. 111, s. 12; Code, s. 3799; Rev., s. 2920; C. S., s. 2628.)

Cross Reference.—As to oaths required, see §§ 11-6, 11-7, and 11-11.

§ **160-8. Vacancies filled.**—In case of a vacancy after election in the office of commissioner the others may fill it until the next election. (R. C., c. 111, s. 9; Code, s. 3793; Rev., s. 2921; C. S., s. 2629.)

§ **160-9. Commissioners appoint other officers and fix salaries.**—The board of commissioners may appoint a town constable, and such other officers and agents as may be necessary to enforce their ordinances and regulations, keep their records, and conduct their affairs; may determine the amount of their salaries or compensation; and also the compensation or salary of the mayor; may impose oaths of office upon them, and require bonds from them payable to the State, in proper penalties for the faithful discharge of their duties. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2925; C. S., s. 2630.)

Special Tax Collector.—Whenever the authorities of a town shall be commanded to levy and collect taxes they may appoint a special tax collector to collect the same. But this power to appoint such a collector is additional, and does not abridge their right to require the collection to be made by the regular officer appointed for that purpose. Webb v. Beaufort, 88 N. C. 496 (1883).

Compensation When No Salary Specified.—Where a municipal corporation engages a commissioner of its sinking fund under the provisions of its charter, by which the incumbent was employed for a term of years continuously, his employment is that of a public officer, which precludes compensation based upon a quantum meruit, and he may not recover for his services in the absence of express statutory provision.

Borden v. Goldsboro, 173 N. C. 661, 92 S. E. 694 (1917).

Applied in Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

Cited in Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942); Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948).

Part 2. Mayor.

§ **160-10. How elected; vacancy.**—At the same time when commissioners are elected, the voters may by ballot, under the inspection of the same persons and under the same rules and regulations, elect a mayor of the town; and the person having the highest number of votes shall be declared elected. In case of vacancy in the office, the commissioners may fill the same. (R. C., c. 111, s. 10; Code, s. 3794; Rev., s. 2931; C. S., s. 2631.)

Cross References.—As to election of mayor under Plan "A" of municipal government, see § 160-309; under Plan "B," see § 160-316; under Plan "C," see § 160-335; under Plan "D," see § 160-345. As to governing body filling vacancy, see § 160-274.

Powers and Duties of Mayor—Mayor Pro Tem.—The word "mayor" first occurs in English history in 1189, when Richard I substituted a mayor for the two bailiffs of London. In 5 Words and Phrases, 4450, it is said that the word "mayor" comes from an old English word "maier," which means "power," "authority," and not from the Latin "major"—greater. He represents the power and authority of the town, and the duty of presiding at meetings of the town commissioners is only one of the duties he exercises. While the powers and duties of the mayor may vary according to the charter of the town or the laws of the State, it is probably without any exception his duty to execute the laws and local regulations of his city and to supervise the discharge of their duties by the subordinate officers of the city government. Such an office could not be left vacant, without public inconvenience, during the illness or absence of the incumbent, and hence § 160-12 provides a mode of selecting a substitute, a pro tem. mayor, who shall "exercise his duties"—meaning all his duties (for there is no restriction) and as fully as he could have done. State v. Thomas, 141 N. C. 791, 53 S. E. 522 (1906). As to restriction on powers, see § 160-274.

§ **160-11. Oath of office.**—The mayor, before some justice of the peace, or other person authorized by law to administer oaths, shall take and subscribe the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties imposed upon him by law, which said oath shall be filed with the records of the town and be entered on the same book with the oaths of the commissioners. (R. C., c. 111, s. 11; Code, s. 3798; Rev., s. 2932; C. S., s. 2632.)

Cross Reference.—As to oaths required, see §§ 11-6, 11-7 and 11-11.

§ **160-12. Presides at commissioners' meeting; mayor pro tem.**—The mayor shall preside at the meetings of the commissioners, but shall have no vote except in case of a tie; and in the event of his absence or sickness, the board of commissioners may appoint one of their number pro tempore, to exercise his duties. (R. C., c. 111, s. 10; Code, s. 3794; Rev., s. 2933; C. S., s. 2633.)

Cross References.—As to veto power of mayor under Plan "A" of municipal government, see § 160-314; under Plan "B," see § 160-323. As to power of mayor pro tempore, see § 160-274.

Mayor's Power to Vote.—Ordinarily the office of mayor is of an executive or administrative character, and he is not permitted to vote except in cases where it is especially provided. Markham v. Simpson, 175 N. C. 135, 95 S. E. 106 (1918).

Powers of Mayor Pro Tem.—The appointment of a mayor pro tem. vest him with all the powers of the mayor, including that of issuing warrants in criminal actions. State v. Thomas, 141 N. C. 791, 53 S. E. 522 (1906). As to restriction on powers, see § 160-274.

§ **160-13. Mayor's jurisdiction as a court.**—The mayor of every city or incorporated town is hereby constituted an inferior court, and as such court such mayor shall be a magistrate and conservator of the peace, and within the corporate limits of his city or town shall have the jurisdiction of a justice of the peace in all criminal matters arising under the laws of the State, or under the ordinances of such city or town. The rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor, and he shall be entitled to the same fees which are allowed to justices of the peace. (1871-2, c. 195; 1876-7, c. 243; Code, s. 3818; Rev., s. 2934; C. S., s. 2634.)

Local Modification.—City of Concord: 1955, c. 687.

Cross References.—As to jurisdiction of a justice of the peace in criminal matters, see §§ 7-129 and 7-211. As to rules of practice before a justice, see § 7-149. As to fees allowed a justice, see § 7-134. As to jurisdiction of municipal recorder's court, see § 7-190. See also, § 7-223. As to municipal-county courts, see § 7-240.

Power of Legislature to Grant Jurisdiction.—The legislature has power to grant to the chief officers of cities and towns all the jurisdiction which it could grant to judges of special courts under the Constitution. State v. Pender, 66 N. C. 314 (1872).

Criminal Jurisdiction.—The mayors of towns and cities have jurisdiction of the offense of violating town or city ordinances. State v. Wilson, 106 N. C. 718, 11 S. E. 254 (1890). They also have the same criminal jurisdiction within the corporate limits as a justice of the peace. Greensboro v. Shields, 78 N. C. 417 (1878). They occasionally have concurrent jurisdiction in such matters. State v. Cainan, 94 N. C. 880 (1886).

Enforcement of City Laws.—"The duties of a mayor are to cause the laws of the city to be enforced, and to superintend inferior officers." State v. Thomas, 141 N. C. 791, 53 S. E. 522 (1906).

Whether Street Established and Obstructed.—The mayor's court has jurisdiction of a case in which the controversy is whether or not a public street has been established, and whether or not a certain party obstructed it in violation of an ordinance. Such a controversy is not as to title to the land for if the street is established title is not material. Henderson v. Davis, 106 N. C. 88, 11 S. E. 573 (1890).

Conviction Not Bar to Prosecution in Higher Courts.—A conviction of violating a city ordinance punishing the disturbance of the good order and quiet of the town by fighting is not a bar to a prosecution by the State for an assault. State v. Taylor, 133 N. C. 755, 46 S. E. 5 (1903).

Punishment for Contempt.—In In re Deaton, 105 N. C. 59, 11 S. E. 244 (1890), it is decided that the power given justices of the peace by § 5-6, is extended to mayors by this section. But, in fact, the power to punish for contempt is inherent in all courts and essential to their existence. State v. Aiken, 113 N. C. 651, 18 S. E. 690 (1893).

Every court inherently possesses power to fine for contempt. As the mayor's court is "an inferior court" it possesses this power. In re Deaton, 105 N. C. 59, 11 S. E. 244 (1890).

Statute or Ordinance Must Be Set Out and Conformed to.—In a trial before a mayor the statute or ordinance that the accused is prosecuted under must be set out, and the one he is prosecuted under conformed to. Greensboro v. Shields, 78 N. C. 417 (1878).

Same—Amendment of Warrant.—A warrant for violating a town ordinance, held bad for omitting to set forth the act by virtue of which the ordinance was passed, may be amended after verdict on payment of costs. Commissioners v. Frank, 46 N. C. 436 (1854).

Right of Removal.—One prosecuted before a mayor for violating a town ordinance is not entitled to a removal under § 7-147, for that section is applicable only to justices of the peace. Although the two officers exercise concurrent jurisdiction in some matters, they are distinct. State v. Joyner, 127 N. C. 541, 37 S. E. 201 (1900).

Applied in State v. Cainan, 94 N. C. 880 (1886); State v. Smith, 103 N. C. 403, 9 S. E. 435 (1889); State v. Peters, 107 N. C. 876, 12 S. E. 74 (1890).

Stated in State v. Doughtie, 238 N. C. 228, 77 S. E. (2d) 642 (1953).

Cited in Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900); Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904); School Directors v. Asheville, 137 N. C. 503, 50 S. E. 279 (1905); Barnes v. Cherry, 190 N. C. 772, 130 S. E. 611 (1925).

§ 160-14. Enforcement of ordinances and penalties.—As such court the mayor shall have authority to hear and determine all cases that may arise upon the ordinances of the city or town; to enforce penalties by issuing execution upon any adjudged violation thereof, and to execute the laws and rules that may be made and provided by the board of commissioners of the city or town for the government and regulation of the city or town; but in all cases any person dissatisfied with the judgment of the mayor may appeal to the superior court as in case of a judgment rendered by a justice of the peace. (1876-7, c. 243, s. 2; Code, s. 3819; Rev., s. 2935; C. S., s. 2635.)

Cross References.—As to punishment for violation of an ordinance, see § 14-4. As to appeal from judgment rendered by a justice of the peace, see § 7-177 et seq., and also § 1-299. As to the adoption of ordinances, see § 160-270.

Superior Court's Jurisdiction over Ordinances.—An offense against a city must be punished under the ordinances of the city, and the superior court has no jurisdiction. State v. White, 76 N. C. 15 (1877); State v. Threadgill, 76 N. C. 17 (1877). This is true if the city ordinance does not conflict with the general law. When there is a conflict the general law prevails, and the superior court has jurisdiction. Washington v. Hammond, 76 N. C. 33 (1877). The right of appeal to the superior court preserves the constitutional rights of one convicted in a mayor's court. State v. Brittain, 143 N. C. 668, 57 S. E. 352 (1907).

Cited in Guano Co. v. Tarboro, 126 N. C. 68, 35 S. E. 231 (1900).

§ 160-15. May sentence to work on streets.—In all cases where judgments may be entered up against any person for fines, according to the laws and ordinances of any incorporated town, and the person against whom the same is so adjudged refuses or is unable to pay such judgment, the mayor before whom such judgment is entered may order and require such person, so convicted, to work on the streets or other public works until, at fair rates of wages, such person shall have worked out the full amount of the judgment and costs of the prosecution; and all sums received for such fines shall be paid into the treasury. No woman shall be worked on the streets. (1866-7, c. 13; Code, s. 3806; 1897, c. 270; 1899, c. 128; Rev., s. 2937; C. S., s. 2636.)

Fine Treated as Debt.—A fine or penalty imposed by a municipal ordinance is treated as a debt, and, under Art. 1, § 16, of the Constitution, a person from whom it is attempted to be collected is exempt from arrest, but he may be indicted and punished for the criminal offense of violation of the ordinance for which it is imposed, under the statute. State v. Earnhardt, 107 N. C. 789, 12 S. E. 426 (1890).

§ 160-16. Mayor certifies ordinances on appeal.—In all cases of appeal from a mayor's court to the superior or other court of appeal, when the offense charged is the violation of a town ordinance the mayor shall send with the papers in the case a true copy of the ordinance alleged to have been violated, and shall certify under his hand and seal that said ordinance was in force at the time of the alleged violation of the same. (1899, c. 277; Rev., s. 2936; C. S., s. 2637.)

Cross Reference.—As to how ordinance is pleaded and proved, see §§ 8-5 and 160-272.

This section is construed with § 8-5 and a certificate or affidavit stating that the attached paper is a copy of the ordinance is sufficient to admit it in evidence, although it is not certified that it was in force at the time of the alleged violation. But anything other than strict compliance with this section is not commended. State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925).

Place of Signature.—"The failure of the mayor to sign the certificate at the bottom does not render it invalid, for the place of the signature is not material. It may be at the top, or in the body, of the instrument, as well as at the foot. Burriss v. Starr, 165 N. C. 657, 81 S. E. 929 (1914). 'It is well settled in this State that when a signature is essential to the validity of an instrument, it is not necessary that the signature appear at the end, unless the statute use the word "subscribe." Devereux v. McMahon, 108 N. C. 134, 12 S. E. 902 (1891); Richards v. Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911); Boger v. Lumber Co., 165 N. C. 557, 81 S. E. 784 (1914).'" State v. Abernethy, 190 N. C. 768, 130 S. E. 619 (1925).

Records Kept by Clerk Evidence of Ordinance.—The records of the proceedings of the board of aldermen, kept by the town clerk, is competent evidence of town ordinances. State v. Irvin, 126 N. C. 89, 35 S. E. 430 (1900).

Part 3. Constable and Policemen.

§ 160-17. Constable to take oath of office.—The town constable shall, before some person authorized to administer oaths, take and subscribe to the oaths prescribed for public officers, and an oath that he will faithfully and impartially discharge the duties of his office according to law, which said oath shall be filed with the mayor and entered in a book with the oaths of the commissioners. (R. C., c. 111, s. 20; Code, s. 3808; Rev., s. 2938; C. S., s. 2638.)

Cross Reference.—As to oaths prescribed for public officers, see §§ 11-6 and 11-7.

Applied in Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904).

§ 160-18. Power and duties of constable.—As a peace officer, the constable shall have within the town all the powers of a constable in the county; and as a ministerial officer, he shall have power to serve all civil and criminal process that may be directed to him by any court within his county, under the same regulations and penalties as prescribed by law in the case of other constables, and to enforce the ordinances and regulations of the board of commissioners as the board may direct. Whenever any process or other notice is so directed as to authorize a township constable to execute the same a town constable in that county may execute the same without any more specific direction: Provided, such town constable shall be required to give bond for performance of his duties such as is required of township constables who execute civil process. (R. C., c. 111, s. 20; 1879, c. 266; Code, ss. 3808, 3810; 1897, c. 519; 1899, c. 168; Rev., s. 2939; 1907, c. 52, s. 1; C. S., s. 2639.)

Cross Reference.—As to powers, duties, bond, etc., of township constables, see § 151-1 et seq.

Process Must Be Directed to Constable.—It was held in Davis v. Sanderlin, 119 N. C. 84, 25 S. E. 815 (1896), that process could not be served by a constable outside of his town or city, where the process was directed to "any constable or other lawful officer of said county" and that to enable a constable of a city or town to serve court process, such process must be directed (addressed) to him, as required, not necessarily by name, but officially as the constable of his city or town. And the law is the same if a constable undertakes to execute process within the limits of the town or city. In all cases where constables undertake to execute process under this section they can do so only in those cases where the process is directed (addressed) to them as constables of such city or town. Forte v. Boone, 114 N. C. 176, 19 S. E. 632 (1894); Upper Appomattox Co. v. Buffalo, 121 N. C. 37, 27 S. E. 999 (1897); Baker v. Brem, 126 N. C. 367, 35 S. E. 630 (1900).

Authority to Serve for Superior Court.—A constable has no authority to serve any paper for the superior court that is not process. Forte v. Boone, 114 N. C. 176, 19 S. E. 632 (1894).

Power to Arrest Restricted.—The powers conferred upon city and town constables are limited, in respect to arrests without warrant, to the territory embraced within the corporate boundaries; but when the constable is acting under a valid warrant from a duly authorized officer, he may make arrests at any place within the county in which such city or town is situated. State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890).

In the absence of statutory authority, the power of a sheriff or other peace officer is limited to his own county, township, or municipality, and he cannot without a warrant make an arrest out of his own county, township, or municipality, where the person to be arrested is charged with the commission of a misdemeanor—beyond such limits his right to arrest is no greater than that of a private citizen. Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942).

Same—Failure to Carry Prisoner before Magistrate for Investigation.—A town constable who fails to carry a drunk arrested without warrant before magistrate for investigation of charge but instead releases him from "lockup" upon his becoming sober is guilty of assault and battery. State v. Parker, 75 N. C. 249 (1876).

§ **160-18.1. Right of police officers to transport prisoners and attend court beyond territorial jurisdiction.**—Police officers are hereby authorized to transport persons charged with crime beyond the corporate limits for the purpose of placing them in jail or to transport persons charged with crime from one jail to another jail or to return persons charged with crime from a point outside the corporate limits to the municipality or to a jail. They are further authorized to go beyond the city limits for the purpose of attending court. (1951, c. 25.)

§ **160-19. Constable as tax collector.**—The constable shall have the same power to collect the taxes imposed by the commissioners as sheriffs have to collect the taxes imposed by the county commissioners, and he may be required by the commissioners to give bond, with sufficient surety, payable to the State of North Carolina, in such sum as the commissioners may prescribe, to account for the same; upon which suit may be brought by the commissioners as upon the bonds of other officers. The bond of the constable shall be duly proved, before the mayor and commissioners, and registered in the office of the register of deeds. (R. C., c. 111, s. 21; Code, s. 3809; Rev., s. 2940; C. S., s. 2640.)

Special Tax Collector Does Not Affect Duty of Constable.—An act providing for the appointment of a special tax collector to collect taxes to pay a judgment against a town does not abridge the authority of the city to require the constable to collect the taxes, but only affords increased facilities for fulfilling the orders of the court without overtaxing existing collecting officers. Webb v. Beaufort, 88 N. C. 496 (1883).

Liability for Failure to Perform Duty.—A constable of a town appointed to collect taxes is liable for his failure to perform his duty. He cannot take advantage of any irregularity of form to avoid liability. Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

§ **160-20. Policemen appointed.**—The board of commissioners may appoint town watch or police, to be regulated by such rules as the board may prescribe. (R. C., c. 111, s. 16; Code, s. 3803; Rev., s. 2926; C. S., s. 2641.)

Municipality May Send Policemen to Training School.—The explicit power of a municipality to appoint and employ police contemplates that the persons so engaged be qualified and competent, and therefore a municipality has implied authority, exercisable within the discretion of its governing body, to send its policemen to a police training school and to make proper expenditures for this purpose. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948). For a leading article on this case, see 27 N. C. Law Rev. 500.

§ **160-20.1. Certain policemen authorized to issue warrants.**—Officers of the police department of any municipality, who are or may be designated as "desk officers" by the chief of police, are hereby authorized to issue warrants in criminal matters in the same manner, to the same extent, and under the same rules of law as are applicable to the issuance of such warrants by justices of the peace on June 30, 1963; provided, that no warrant so issued may be served by the issuing officer. Providing the provisions of this section shall not apply to any municipality having a population of less than four thousand (4,000) based upon the most recent federal decennial census. (1963, c. 1261, s. 1.)

Local Modification.—Washington: 1963, c. 1261, s. 1.5.

§ **160-21. Policemen execute criminal process.**—A policeman shall have the same authority to make arrests and to execute criminal process, within the town limits, as is vested by law in a sheriff. (Code, s. 3811; Rev., s. 2927; C. S., s. 2642.)

Cross Reference.—As to arrest generally, see § 15-39 et seq.

In General.—Where a town charter provides for the appointment of a chief of police or marshal and declares that, in the execution of process, he shall have the same power, etc., which sheriffs and constables have, the service by such officer of a summons directed to "the sheriff of W. county or town constable of W. town" is valid. Lowe v. Harris, 121 N. C. 287, 28 S. E. 535 (1897).

Power to Arrest Limited.—The power of a policeman to arrest without a warrant is restricted to the corporate limits of the city, and an arrest out of the limits without a warrant for the breach of an ordinance is an assault. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757 (1903). See also, Wilson v. Mooresville, 222 N. C. 283, 22 S. E. (2d) 907 (1942).

A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. Tomlinson v. Norwood, 208 N. C. 716, 182 S. E. 659 (1935). See §§ 14-224 and 15-45.

Arrest without a Warrant.—A police officer may arrest without warrant for violation of municipal ordinances, committed in his presence; but the offender must be taken before the mayor as soon as practicable, a warrant obtained and trial had. State v. Freeman, 86 N. C. 683 (1882). But to make an arrest out of the town limits he must do so under a warrant or by virtue of §§ 15-40, 15-41. Martin v. Houck, 141 N. C. 317, 54 S. E. 291 (1906). Otherwise the arrest will be an assault. Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757 (1903).

An instruction to the effect that police officers had a right to enter a cafe without a warrant and make whatever investigation they deemed necessary is held without error, since the officers have a right to enter a public place as invitees unless forbidden to enter therein, and further, officers may enter public or private property upon hearing a disturbance therein and make an arrest without a warrant to prevent a breach of the peace. State v. Wray, 217 N. C. 167, 7 S. E. (2d) 468 (1940).

A police officer within the limits of the city which has clothed him with authority, like a sheriff or constable, may summarily and without warrant arrest a person for a misdemeanor committed in his presence. This is a necessary concomitant of police power and essential for police protection. But in such case it is the duty of the officer to inform the person arrested of the charge against him and immediately take him before someone authorized to issue criminal warrants and have a warrant issued, giving him opportunity to provide bail and communicate with counsel and friends. Perry

v. Hurdle, 229 N. C. 216, 49 S. E. (2d) 400 (1948).

Force Allowed in Making Arrests.—If an officer is resisted in making an arrest, he may use that degree of force which is necessary to the proper performance of his duty; and, after an accused person is arrested, the officer is justified in the use of such force as may be necessary, even to taking life, to prevent his escape, whether the offense charged is a felony or misdemeanor. He may take such precautions as handcuffing or tying the prisoner. State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890).

No Right to Kill or Injure Misdemeanant Fleeing Arrest.—When a person charged with a misdemeanor is fleeing from arrest, and an officer shoots him, such officer is guilty of assault. If death results the officer is guilty of murder if he intended to kill; manslaughter if unintentional. State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890); Sossamon v. Cruse, 133 N. C. 470, 45 S. E. 757 (1903).

Cited in Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904); Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948).

Part 4. Planning Boards.

§ 160-22. Creation and duties.—Every city and town in the State is authorized to create a board to be known as the Planning Board, whose duty it shall be to make careful study of the resources, possibilities and needs of the city or town, particularly with respect to the conditions which may be injurious to the public welfare or otherwise injurious, and to make plans for the development of the municipality. The governing body of such city or town desiring to establish such local planning board shall appoint not less than three nor more than nine on said board. The governing body of any city or town is hereby authorized to enter into any agreements with any other city, town or county for the establishment of a joint planning board.

Any planning board established under the authority of this section by any one county, city, or town or any joint planning board or agency established by agreement, pursuant to this section, between two or more city or county governing bodies may, with the concurrence of the governing body or bodies to which it is responsible,

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which said government or agencies grant financial or other assistance to said planning board,

(2) Accept such assistance or funds as may be granted by the federal government with or without such a contract,

(3) Agree to and comply with any reasonable conditions which are imposed upon such grants,

(4) Make expenditures from any funds so granted.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers. Any planning agency established pursuant to general or special act of the North Carolina General Assembly which has been granted extraterritorial planning jurisdiction, or a joint planning agency of two or more political subdivisions that have been granted joint planning jurisdiction or a county-wide planning agency shall be deemed a regional or metropolitan planning agency for the purpose of accepting such assistance or funds as may be granted by the federal government.

Any planning board or agency established by special act of the General Assembly shall have the same power and authority as granted in the preceding paragraph to planning boards and agencies established pursuant to the general law.

Any planning board established under the authority of this section, or pursuant to a special act of the General Assembly, may, with the concurrence of the governing body or bodies to which it is responsible,

(1) Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to furnish technical planning assistance to such other planning board or boards; or

(2) Enter into and carry out contracts with any other city, county, or joint planning board or boards under which it agrees to pay such other plan-

ning board or boards for technical planning assistance to be furnished by the staff of such other board or boards.

The appropriate city and county governing bodies are hereby authorized to concur in such contracts or to enter into them as co-makers.

Said governing bodies are authorized to make such appropriations as may be necessary to carry out any activities or contracts authorized by this section, and to levy annually taxes for the payment of the same as a special purpose, in addition to any allowed by the Constitution. (1919, c. 23, s. 1; C. S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390.)

Local Modification.—Chatham, Stanly, Vance, Wake: 1945, c. 1040, ss. 2½, 3; City of Wilson: 1961, c. 634; 1963, c. 151.

Editor's Note.—The 1945 amendment added the last sentence.

The first 1955 amendment substituted "nine" for "five" in the second sentence of the first paragraph, and the second 1955 amendment added the second and third paragraphs.

The first 1959 amendment inserted the words "State or" in subdivision (1) of the second paragraph, and the second 1959 amendment added the last three paragraphs. Session laws 1959, c. 659, provides that the amendments shall not apply to Lenoir County.

In North Carolina, the beginning of municipal zoning is seen in the statute of 1919 authorizing cities and towns to create planning boards. This was followed in 1923 by the general zoning law, § 160-172 et seq. of the General Statutes. See 5 N. C. Law Rev. 240

§ **160-23. Board to make reports.**—The board shall make a report at least annually to the governing body of the city or town, giving information regarding the condition of the city or town, and any plans or proposals for the development of the city or town and estimates of the cost thereof. (1919, c. 23, s. 2; C. S., s. 2644.)

§ **160-24. Expenses provided for.**—The governing body of such city or town may appropriate to such local planning board such amount as they may deem necessary to carry out the purposes of its creation, and for the improvement of the municipality, and shall provide what sums, if any, shall be paid to said board as compensation. (1919, c. 23, s. 3; C. S., s. 2645.)

Part 5. General Qualification of Officers.

§ **160-25. Must be voters in town or city.**—No person shall be a mayor, commissioner, councilman, or alderman of any city or town unless he shall be a qualified voter therein. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C. S., s. 2646; 1951, c. 24.)

Local Modification.—Nash: 1951, c. 1208, s. 1; town of Andrews: 1947, c. 419; town of Bakersville: 1957, c. 649; city of Bryson City: 1947, c. 363; town of Burnsville: 1957, c. 161; town of Franklin: 1947, c. 38; town of Highlands: 1947, c. 45; town of Marion: 1947, c. 793; town of Mars Hill: 1947, c. 566; town of Maxton: 1963, c. 279; town of Nashville: 1951, c. 1208; Town of Old Fort: 1947, c. 793; town of Robbinsville: 1949, c. 55; town of Snow Hill: 1963, c. 347; town of Spring Hope in Nash County: 1951, c. 281; town of Sylva: 1947, c. 11; town of Wallace: 1947, c. 799; town of Weldon: 1957, c. 1096; municipalities in Transylvania: 1947, c. 246.

Cross Reference.—As to removal when person unlawfully holds office, see § 1-515.

Editor's Note.—The 1951 amendment deleted "intendant of police" and "or other chief officer" formerly appearing in this section, and inserted "councilman."

Vacating Office for Pre-Existing Impediment.—While there can be no serious doubt of the right of a corporate body to vacate the seat of a corporate officer for adequate causes arising subsequent to taking his seat, there has been no precedent for depriving a member of his place by the action of a municipal body of which he is a member for any pre-existing impediment affecting his capacity to hold the office. Ellison v. Raleigh, 89 N. C. 125 (1883).

Applied in Foard v. Hall, 111 N. C. 369, 16 S. E. 420 (1892); (prior to 1951 act deleting "intendant of police") Barlow v. Benfield, 231 N. C. 663, 58 S. E. (2d) 637 (1950).

§ **160-26. Refusal to qualify and act.**—Every person elected or appointed commissioner, mayor, or town constable, who, after being duly notified, shall neglect or refuse to qualify and perform the duties of his office or appointment, shall pay twenty-five dollars, one-half to the use of the town and the other half to the use of any person who will sue for the same. (R. C., c. 111, s. 22; Code, s. 3812; Rev., s. 2942; C. S., s. 2647.)

Cross Reference.—As to time for mayor elected under plans A, B, C, and D to qualify, see § 160-307.

Constitutionality.—The provisions of this section are not in conflict with Art. I, § 17, of the Constitution. London v. Headen, 76 N. C. 72 (1877).

§ **160-27. Hold office until successor qualified.**—Whenever the day of election shall be altered, the officers of the corporation elected or appointed before that day shall hold their places till the day of election, and until other officers shall be elected or appointed and qualified. And they shall hold their offices in like manner when there is any failure to make the annual election. (R. C., c. 111, s. 8; Code, s. 3792; Rev., s. 2943; C. S., s. 2648.)

Part 6. Reduction of Salaries.

§ **160-28. Reduction of salaries notwithstanding legislative enactment.**—Whenever the salary of any officer or employee of any county, city, town, or other municipality has been fixed by legislative enactment, the governing body of such county, city, town, or other municipality may reduce such salary by an amount not to exceed ten per cent of the salary as so fixed: Provided, this section shall not apply to salaries of teachers or other officers in the public schools. (1931, c. 429, s. 21.)

ARTICLE 3.

Elections Regulated.

§ **160-29. Application of law and exceptions.**—All elections held in any city or town shall be held under the following rules and regulations, except in the cities of Charlotte, Fayetteville and Greensboro, and in the towns in the counties of Bertie, Cabarrus, Caldwell, Catawba, Davidson, Edgecombe, Gaston, Nash, Pitt, Robeson, Stokes, Surry, Vance, Wayne and Wilson; provided that the elections held in the city of Newton and the towns of Castalia and Pilot Mountain shall be governed by the provisions of this article. (1901, c. 750, ss. 1, 21; 1903, cc. 184, 218, 626, 769, 777; Rev., s. 2944; 1907, c. 165; Ex. Sess. 1908, c. 63; 1909, c. 365; C. S., s. 2649; 1931, c. 369; 1933, c. 102; 1935, c. 215, s. 1; 1935, c. 353; 1953, c. 431; 1957, c. 242, s. 1; c. 446, s. 1; 1959, c. 53, s. 1; c. 174; c. 192.)

Local Modification.—Gaston, town of Belmont: 1935, c. 161; city of Lenoir: 1947, c. 615, s. 2.

Cross References.—As to application of general election laws to cities and towns, see § 163-148. As to primaries in municipalities operating under Plan C, see § 160-335.

Editor's Note.—The 1931 amendment and the first 1935 amendment struck out "Columbus" and "Mitchell," respectively, from the list of counties in this section.

The 1933 amendment deleted the town of Shelby from the list of excepted places, and the second 1935 amendment added the town of Graham to the list.

The 1953 amendment added the provision as to the town of Pilot Mountain.

The first 1957 amendment added the provision as to the town of Castalia. The second 1957 amendment, deleting Lenoir from the list of counties, provided that all the provisions of this article shall be applicable to the cities and towns of the county.

The first 1959 amendment added the provisions as to the city of Newton. The second 1959 amendment deleted Chowan from the list of counties. The third 1959 amendment deleted the town of Graham from the list of excepted places.

Cited in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908); Reid v. Pilot Mountain Mayor & Board of Com'rs, 241 N. C. 551, 85 S. E. (2d) 872 (1955).

§ **160-30. When elections held.**—In all cities and towns an election shall be held on Tuesday after the first Monday of May, one thousand nine hundred and five, and biennially thereafter. (1901, c. 750, s. 19; Rev., s. 2945; 1907, c. 165; C. S., s. 2650.)

Local Modification.—Harnett: C. S. 2650; Harnett, town of Dunn: 1925, c. 67; Mitchell, town of Spruce Pine: 1935, c. 215; 1955, c. 761; city of Newton: 1959, c. 53,

s. 2; town of Castalia: 1957, c. 242, s. 2.

Editor's Note.—Session Laws 1947, c. 615, s. 1, provides: "The provisions of §§ 160-30 through 160-51 of the General Statutes shall be applicable to all municipal elections held in the city of Lenoir in Caldwell County, except primary elections."

Applied in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ **160-31. Polling places.**—There shall be at least one polling place in each ward in the town or city, if the said town or city is divided into wards; and if not divided into wards, then there shall be as many polling places as may be established by the governing body of said town or city. (1901, c. 750, s. 2; Rev., s. 2946; C. S., s. 2651.)

Local Modification.—Alamance: 1943, c. 591.

Cross Reference.—See § 163-163.

Fixed by Governing Authorities and Fully Advertised.—The general law clearly contemplates that the polling place should be fixed by the governing authorities of the city or town; and these places are, as a rule, of the substance and should be established and fully advertised. Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ **160-32. Registrars appointed.**—The board of commissioners shall select, at least thirty days before any city or town election, one person for each election precinct, who shall act as registrar of voters for such precinct; and shall make publication of the names of the persons so selected, and of the time of the election, at the town or city hall, or at the usual place of holding the mayor's court, immediately after such appointment, and shall cause a notice to be served upon the registrars by the sheriff of the county or the township constable. If any registrar shall die or neglect to perform his duties, said governing body may appoint another in his place. (1901, c. 750, s. 5; 1903, c. 613; Rev., s. 2947; C. S., s. 2652.)

Local Modification.—Alamance: 1935, c. 353.

§ **160-33. Registrars take oath of office.**—Before entering upon the duties of his office each registrar shall take an oath before some person authorized by law to administer oaths to faithfully perform the duties of his office as registrar. (1901, c. 750, s. 6; Rev., s. 2948; C. S., s. 2653.)

Cross Reference.—As to oath taken by registrars and judges of elections, see § 163-164

Registration Accepted in Absence of Oath.—Even if no oath is administered to the registrar, the registration must be accepted as the act of a public officer. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Freeholders Not Required.—The registrars are not required to be freeholders. Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ **160-34. Registration of voters.**—It shall be the duty of the board of commissioners of every city and town to cause a registration to be made of all the qualified voters residing therein, under the rules and regulations prescribed for the registration of voters for general elections. And where there has been a registration of voters, the board of commissioners may, in its discretion, order a new registration of voters; and unless such new registration shall be ordered, the election shall be held under the existing registration, with such revision as is herein provided. (Code, s. 3795; 1901, c. 750, s. 3; Rev., c. 2949; C. S., s. 2654.)

Local Modification.—Alamance: 1935, c. 353; town of North Wilkesboro: 1955, c. 765.

Cross Reference.—As to qualification and registration of voters see Constitution, Art. VI, §§ 2 and 3, and § 163-29 et seq.

Qualified Voters.—A "qualified voter" is one duly registered. Southerland v. Goldsboro, 96 N. C. 49, 1 S. E. 760 (1887).

When a town charter provides for registration biennially, one registering as required by the charter answers the requirement, and should be allowed to vote in all city elections. In case a registration is called for by the corporate authorities notice must be given as provided by the preceding section and failure to give such notice will not give the city authorities power to deprive one of the right to vote under his regular registration. Smith v. Wilmington, 98 N. C. 343, 4 S. E. 489 (1887).

The words "general elections" refer not to an election purely local, but to one held throughout the State, when the books are required to be kept open for twenty days. If it was intended to refer to municipal elections, the legislature would not have used the word "general," but the word "regular," the former word being chosen as having a definite and well understood meaning and as contradistinguished from "local" or "municipal." Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Under this statute voters at municipal elections must have the same qualifications as are required in general elections, i. e., in elections for State and county. State v. Viele, 164 N. C. 122, 80 S. E. 408 (1913).

Cited in Gower v Carter, 195 N. C. 697, 143 S. E. 513 (1928).

§ 160-35. Notice of new registration.—In the event a new registration is ordered the board of commissioners shall give thirty days' notice thereof by advertisement in some newspaper, if there be one published in the town or city, and if there be none so published, then in three public places in the city or town. (1901, c. 750, s. 4; Rev., s. 2950; C. S., s. 2655.)

Local Modification.—Alamance: 1935, c. 353.

Failure to Give Notice.—While the law providing for notice of election and the registration of voters is mandatory as to the officers required to give such notice, it is only directory where a fair election has been held and voters were not deprived of their right of suffrage, in which case the failure to give notice is not ground for disturbing the election where the result could not have been otherwise. Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915), cited in Hardee v Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Notice Signed by Clerk.—As to sufficiency of notice given by order of the board signed only by the clerk, see discussion in Briggs v. Raleigh, 166 N. C. 149, 81 S. E. 1084 (1914).

§ 160-36. Registration books revised.—Each registrar shall be furnished with registration books, and it shall be his duty to revise the registration book of his precinct in such manner that said books shall show an accurate list of the electors previously registered in such ward or precinct and still residing therein, without requiring such electors to be registered anew. (1901, c. 750, s. 6; Rev., s. 2951; C. S., s. 2656.)

§ 160-37. Time for registration.—Each registrar shall, between the hours of nine o'clock a. m. and five o'clock p. m. on each day (Sunday excepted) for seven days preceding the day for closing the registration books, as hereinafter provided, keep open said books for the registration of any new electors residing in the precinct, and entitled to register, whose names have never before been registered in such precinct, or do not appear in the revised list. Such books shall be open until nine o'clock p. m. of each Saturday during such registration period and shall be closed for registration on the second Saturday before each election. (1901, c. 750, s. 6; Rev., s. 2952; C. S., s. 2657.)

This section was intended for the registration of new voters and not for the registration of all the voters. Section 163-31 provides for registration of all the voters. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Section Only Directory.—"The fact that the registration book was not kept open during the whole prescribed period, on the Saturday before the election, cannot be allowed to render the election void, when it was kept open for inspection up to 2 p.m., and no one was denied the opportunity of examining it or sought it afterwards. This does not vitiate the election." State v. Nicholson, 102 N. C 465, 9 S. E. 545 (1889).

In Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915), it was settled that, though registration books which by law should have been kept open twenty days were kept open only for eight days, the election will not be set aside where there was an extremely large registration and it did not appear that any voters were deprived of their rights or that a longer period of registration would in any way have affected the results. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

§ 160-38. Registration on election day.—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become of the age of twenty-one years or otherwise has become qualified to register and vote since the registration books were closed for registration, he shall be allowed to register and vote. (1901, c. 750, s. 8; Rev., s. 2953; C. S., s. 2658.)

§ **160-39. Books open for challenge.**—On the second Saturday before the election the registration books shall be kept open at the polling place in the precinct for the inspection of the electors of the precinct, and any of such electors shall be allowed to object to the name of any person appearing on said books. (1901, c. 750, s. 7; Rev., s. 2955; C. S., s. 2659.)

§ **160-40. Practice in challenges.**—When a person is challenged the registrar shall enter upon his books opposite the name of the person objected to the word "challenged," and the registrar shall appoint a time and place, on or befor the Monday immediately preceding election day, when he, together with the judges of election, shall hear and decide the objection, giving personal notice to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient to leave a copy thereof at his residence. If any person challenged shall be found not duly qualified, the registrar shall erase his name from the books. They shall hear and determine the cause of challenge under the rules and regulations prescribed by the general law regulating elections for members of the General Assembly. (1901, c. 750, ss. 7, 9; Rev., s. 2956; C. S., s. 2660.)

§ **160-41. Judges of election.**—The board of commissioners shall appoint, at least thirty days before any city or town election, two judges of election, who shall be of different political parties where possible, and shall be men of good character, able to read and write, at each place of holding election in said city or town, who, before entering upon the discharge of their duties, shall take an oath, before some person authorized by law to administer oaths, to conduct the election fairly and impartially, according to the Constitution and laws of the State. (1901, c. 750, s. 7; Rev., s. 2958; C. S., s. 2661.)

Local Modification.—Alamance: 1935, c. 353.

Cross Reference.—As to oath taken by judges of election, see § 163-164.

Applied in Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908).

§ **160-42. Vacancies on election day.**—If any vacancy shall occur on the day of election in the office of registrar, the same shall be filled by the judges of election, and if any vacancy shall occur on that day in the office of judge the same shall be filled by the registrar; vacancies occurring at any other time shall be filled by the board of commissioners. (1901, c. 750, s. 20; Rev., s. 2954; C. S., s. 2662.)

§ **160-43. Judges superintend election.**—The judges of election shall open the polls and superintend the same until the close of election; they shall keep poll books in which shall be entered the name of every person who shall vote, and at the close of the election they shall certify the same over their proper signatures and deposit them with the board of commissioners. (1901, c. 750, s. 7; Rev., s. 2959; C. S., s. 2663.)

§ **160-44. When polls open and close.**—The polls shall be open on the day of election from six thirty o'clock a.m. until six thirty o'clock p.m. Eastern Standard Time, and no longer; and each person whose name may be registered shall be entitled to vote. (1901, c. 750, s. 10; Rev., s. 2960; C. S., s. 2664; 1941, c. 222.)

§ **160-45. Who may vote.**—All qualified electors, who shall have resided for thirty days immediately preceding an election within the limits of any voting precinct of a city or town, and not otherwise, shall have the right to vote in such precinct for mayor and other city or town officers. (1901, c. 750, s. 9; Rev., s. 2961; C. S., s. 2665; 1959, c. 886.)

Cross Reference.—As to qualification of voters, see N. C. Constitution, Art. VI, §§ 2 and 3.

Editor's Note.—The 1959 amendment substituted "thirty days" for "four months."

Qualification for Municipal Suffrage.—Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N. C. 198, 21 Am. Rep. 465 (1875); State v. Viele, 164 N. C. 122, 80 S. E. 408 (1913); Gower v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

§ **160-46. Ballots counted.**—When the election shall be finished the registrar and judges of election shall open the boxes and count the ballots, reading aloud the names of the persons which shall appear on each ballot; and if there shall be two or more ballots rolled up together, or any ballot shall contain the names of more persons than the elector has the right to vote for, or shall have a device or ornament upon it, in either of these cases such ballot shall not be numbered in taking the ballots, but shall be void; and the counting of votes shall be continued without adjournment until completed, and the result thereof declared. (1901, c. 750, s. 13; Rev., s. 2963; C. S., s. 2667.)

§ **160-47. Registration books, where deposited.**—Immediately after any election the registrars shall deposit the registration books for the respective precincts with the board of commissioners. (1901, c. 750, s. 11; Rev., s. 2957; C. S., s. 2668.)

§ **160-48. Board of canvassers.**—The registrar and judges of election in each voting precinct shall appoint one of their number to attend the meeting of the board of canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns of the result of the election in such precinct; and the members of the board of canvassers who shall have been so appointed shall attend the meeting of the board of canvassers, and shall constitute the board of town canvassers for such election, and a majority of them shall constitute a quorum. In towns where there is only one voting precinct, the registrar and judges of election shall, at the close of the election, declare the result thereof. (1901, c. 750, ss. 13, 14; Rev., s. 2964; C. S., s. 2669.)

Cited in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ **160-49. Meeting of board of canvassers.**—The board of canvassers shall meet on the next day after the election at twelve o'clock m., at the mayor's office, and they shall each take the oath prescribed in the general law governing elections for members of the county board of elections. (1901, c. 750, s. 15; Rev., s. 2965; C. S., s. 2670.)

Cited in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ **160-50. Board determines result; tie vote.**—The board of canvassers shall, at their meeting, in the presence of such electors as choose to attend, open, canvass and judicially determine the result, and shall make abstracts, stating the number of legal ballots cast in each precinct for each office, the name of each person voted for and the number of votes given to each person for each different office, and shall sign the same. It shall have power and authority to pass upon judicially all the votes relative to the election and judicially determine and declare the result of the same, and shall have power and authority to send for papers and persons and examine the latter upon oath; and in case of a tie between two opposing candidates, the result shall be determined by lot. In all other respects all elections held in any town or city shall be conducted as prescribed for the election of members of the General Assembly. (1901, c. 750, ss. 16, 17; Rev., s. 2966; C. S., s. 2671.)

Cross Reference.—As to declaration of election and tie vote in county elections, see § 163-91.

Burden of Proof.—In an action in quo warranto to try title to an office the burden of proof is on the plaintiff to show that the holder of the office has not been duly elected by qualified voters. This is not shown when after rejecting certain votes there is a tie. Gower v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

Where Notice Not Given for Full Period.—Where the election for the issue of bonds by a township for road purposes has been held in all respects in accordance with the provisions of a statute, at the usual polling places, etc., they will not be declared invalid at the instance of a purchaser, on the ground that the full period of the thirty-day notice of the time and place of the election had not been advertised as set out in this section when there is no suggestion of fraud and full publicity had been given by newspapers of large local circulation, the election had been broadly discussed beforehand, and it does not appear that any voter is objecting to the bonds or has been deprived of his right to vote. Board v. Malone, 179 N. C. 10, 101 S. E. 500 (1919).

§ **160-51. Notice of special election.**—No special election shall be held for any purpose in any county, township, city or town unless at least thirty days' notice shall have been given of the same by advertisement in some newspaper published in said county, city or town, or by advertisement posted at the courthouse of the county and four other public places in such county, city or town. (1901, c. 750, s. 24; Rev., s. 2967; C. S., s. 2672.)

§ **160-51.1. Municipalities empowered to acquire voting machines.**—Municipalities shall have the power to acquire or purchase voting machines for use in primaries and elections and to raise or appropriate money therefor. (1953, c. 1065, s. 3.)

Editor's Note.—Section 4 of the act from which this section is derived, which also amended § 160-387, provided that "the powers conferred * * * upon municipalities to authorize bonds pursuant to the Municipal Finance Act, 1921, for the purchase of voting machines, or to raise or appropriate money therefor, as provided in this act, shall be subject to the provisions and limitations of any general, special or local act relating to the use of voting machines enacted before adjournment of the regular session of the General Assembly in 1953."

ARTICLE 4.

Ordinances and Regulations.

§ **160-52. General power to make ordinances.**—The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary; and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalities. (R. C., c. 111, ss. 12, 17; Code, ss. 3799, 3804; Rev., s. 2923; C. S., s. 2673.)

Cross References.—As to powers to pass ordinances under the act of 1917, see § 160-200, subdivision (7). As to enforcement of municipal ordinances, see §§ 160-13, 160-14, 160-18, 160-21 and 14-4.

Editor's Note.—To give all the illustrations of the general application of the principle of this section to be found in the reports would be too extensive for a work of this kind and reference should be had to digest citations for a more complete treatment.

As to ordinances "inconsistent with this chapter and the law of the land," see 27 N. C. Law Rev. 567.

In General.—"In construing this and similar legislation elsewhere, the courts have very generally held that the established municipal authorities may enact such ordinances as are promotive of the peace and good order of the town, the limitation being that the regulations may not be unreasonable or unduly discriminative nor manifestly oppressive and in 'derogation of common right.'" State v. Burbage, 172 N. C. 876, 89 S. E. 795 (1916).

It is not necessary now to aver an authority to pass the ordinance conferred by a general and public law, as it was when that authority was derived under a special act of incorporation. State v. Merritt, 83 N. C. 677 (1880).

Construction against City.—A doubt as to whether an ordinance is invalid, as conflicting with individual rights, should be resolved against the city. Slaughter v. O'Berry, 126 N. C. 181, 35 S. E. 241, 48 L. R. A. 442 (1900).

Courts Slow to Question Discretion of Ordinance.—By this section discretionary power is vested in the city authorities, and the courts will be slow to interfere when the ordinance is not contrary to the laws of the State and no fraud, dishonesty or oppression is charged. State v. Austin, 114 N. C. 855, 19 S. E. 919 (1894). Or unless their action is so clearly unreasonable as to amount to oppression and manifest abuse of their discretion, and then the power of the court will be exercised with great caution and only in a clear case. Jones v. North Wilkesboro, 150 N. C. 646, 64 S. E. 866 (1909).

Ordinances Operative until Repealed.—Succeeding boards of commissioners are deemed to act subject to the provisions of ordinances passed by their predecessors in authority, until they see fit to repeal them. Hutchins v. Durham, 118 N. C. 457, 24 S. E. 723 (1896).

General Laws Prevail over Ordinances.—"The true principle is that municipal bylaws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws the bylaws and ordinances must give way." Washington v. Hammond, 76 N. C. 33 (1877); State v. Stevens, 114 N. C. 873, 19 S. E. 861 (1894).

Classification of Occupations.—The general question of the right of classification was very fully considered in State v. Davis, 157 N. C. 648, 74 S. E. 130 (1911), and Smith v. Wilkins, 164 N. C. 135, 80 S. E. 168 (1913), and the doctrine was approved that the General Assembly or municipal corporation has the power to classify the different occupations, provided the classification is not unreasonable and oppressive, and that usually the extent to which the power will be exercised is for the General Assembly or the governing body of the municipality. State v. Davis, 171 N. C. 809, 89 S. E. 40 (1916).

An ordinance of a town, authorized by statute, imposing a fine of $25 upon drug stores for selling cigars, etc., on Sunday, and a fine of $5 for the same offense upon restaurants, cafés, and lunch stands declaring the same to be a misdemeanor, relates to distinct and easily severable occupations, and in the absence of any finding that those engaged in them come in competition with each other, the ordinance will not be declared unconstitutional and invalid upon the ground that it is discretionary against the owners of drug stores. State v. Davis, 171 N. C. 809, 89 S. E. 40 (1916).

Sunday Ordinances.—By virtue of this section the power to enact Sunday ordinances has been delegated to the municipalities of the State. State v. Trantham, 230 N. C. 641, 55 S. E. (2d) 198 (1949).

"It is against the public policy of the State that one should pursue his ordinary business calling on Sunday, and it is very generally understood not only that ordinary business pursuits may be regulated, but altogether prohibited on Sunday." State v. Medlin, 170 N. C. 682, 86 S. E. 597 (1915); State v. Burbage, 172 N. C. 876, 89 S. E. 795 (1916).

An ordinance of a town may, under the provisions of this section prohibit the opening of all places of business on Sunday, except drug stores; and it is not an unreasonable regulation, under the police power of the town, inasmuch as drug stores are open all day Sunday, for the governing authorities to further provide that they may sell articles of common use which are quasi necessities to many, such as mineral waters, soft drinks, cigars and tobacco, only, between certain hours of that day. State v. Medlin, 170 N. C. 682, 86 S. E. 597 (1915).

Neither the repeal of § 103-1 nor the provision of the repealing act with respect to the repeal of all laws and clauses of laws in conflict therewith has the effect of repealing the power granted to municipalities by this section to enact ordinances requiring the observance of Sunday. State v. McGee, 237 N. C. 633, 75 S. E. (2d) 783 (1953).

Power to Close Business at Certain Hours.—The right of a city to restrict hours of business is restricted to cases when it is for the protection and benefit of the public. It has no power to require a merchant to close his store at an early hour because other merchants so desire to close all stores at a regular early hour. State v. Ray, 131 N. C. 814, 42 S. E. 960 (1902).

Sitting in Place of Business after Closing Time.—A city has power to restrict the use of property in so far as it may injure others, but it has no power to provide against a person sitting in his place of business after a time prescribed for closing it. State v. Thomas, 118 N. C. 1221, 24 S. E. 535 (1896).

Regulation of Gasoline Stations.—That the regulation of gasoline filling or gasoline storage stations comes within the police power of the State is freely conceded; and that such power is specifically conferred upon the plaintiff is likewise conceded. Wake Forest v. Medlin, 199 N. C. 83, 154 S. E. 29 (1930).

It is not necessary to the validity of an ordinance regulating the establishment of gasoline filling stations in a municipality that it substantially comply with the provisions of § 160-172 et seq., since the regulation of filling stations comes within the State police power which has been conferred on municipalities by the general law. Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585 (1938).

Power That May Be Conferred on Constable.—An ordinance could not constitutionally confer upon a constable, a ministerial officer, the power to arrest and imprison for a penalty incurred or for any other violation of law, except it may be for safe custody. Men may not be arrested, imprisoned and released upon the judgment or at the discretion of a constable or anyone else. State v. Parker, 75 N. C. 249 (1876).

Insulting an Officer.—The commissioners of a town have no authority to make it unlawful for one to insult an officer or police while in the discharge of his duty, nor to provide a fine for one convicted of such offense. State v. Clay, 118 N. C. 1234, 24 S. E. 492 (1896).

Ordinance against Hogs at Large.—A town ordinance declaring that "all hogs, etc., found running at large within the town" shall be taken up or impounded, is valid, whether the owner resides within the corporate limits of such town or not. Rose v. Hardie, 98 N. C. 44, 4 S. E. 41 (1887). See § 68-24 and notes.

Parking Fee Not Authorized.—This section does not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940). But see § 160-200, subdivision (31), which was amended by Public Laws 1941, cc. 153 and 319, after the decision in this case.

Applied in State v. Stevens, 114 N. C. 873, 19 S. E. 861 (1894).

Cited in State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901 (1949); Davis v. Charlotte, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

§ 160-53. Power to establish and regulate markets.—The board of commissioners may establish and regulate their markets, and prescribe at what place, within the corporation, shall be sold marketable things; in what manner, whether by weight or measure, may be sold grain, meal or flour (if flour be not packed in barrels), fodder, hay, or oats in straw; may erect scales for the purpose of weighing the same, appoint a weigher, fix his fees, and direct by whom they shall be paid. But it shall not be lawful for the commissioners or other authorities of any town to impose any tax whatever on wagons or carts selling farm products, garden truck, fish and oysters on the public streets thereof. (R. C., c. 111, s. 14; 1879, c. 176; Code, s. 3801; Rev., s. 2928; C. S., s. 2674.)

Cross Reference.—As to market houses, their establishment and maintenance, see §§ 160-167 and 160-228.

Section Is Liberally Construed.—"The courts have been disposed to construe much more liberally grants to municipalities of authority to exercise a limited control over the markets by prescribing reasonable regulations either for the protection of the health or the comfort or convenience of its people, than laws that purport to invest such corporations with more extraordinary powers." State v. Summerfield, 107 N. C. 895, 12 S. E. 114 (1890).

Contract for Erection of Market.—A contract between a city and individuals for the erection by the individuals of a market house, which shall be under the control of the city, and which provides for a maximum rental for stalls therein, and which declares that the city shall pay a rental equal to the taxes on the property, until the enterprise is on a paying basis, and which permits the city, at its option, to purchase the property, is not in conflict with the Constitution, and does not violate any principle of public policy. State v. Perry, 151 N. C. 661, 65 S. E. 915 (1909).

Lease of Building for Market Purposes.—If a municipal corporation has power under its charter to build a market house, it has power also to lease a building for market purposes. Wade v. New Bern, 77 N. C. 460 (1877).

Prohibiting Sale of Merchandise Outside of Market.—A town or city having the power under its charter to regulate its markets, and prescribe at what places and in what manner in the town market things shall be sold, may prohibit by an ordinance the sale of fresh meats within the corporate limits outside of the market house, and may impose a penalty for a violation of the ordinance. State v. Pendergrass, 106 N. C. 664, 10 S. E. 1002 (1890); Angels v. Winston-Salem, 193 N. C. 207, 136 S. E. 489 (1927).

Extent of Control over Market When Leased.—The occupant of a market stall, under a license subject to revocation under the provision of the city ordinances, acquires no right in the soil, as under a lease, and no additional right of possession, from the fact that he has been allowed to hold over because there was no annual renting of stalls on the day prescribed by the ordinance; but he is an occupant at the absolute pleasure and discretion of the licensor. Hutchins v. Durham, 118 N. C. 457, 24 S. E. 273, 32 L. R. A. 706 (1896).

Power to Require Weighing of Oats.—An ordinance adopted by the intendant and commissioners of the city of Raleigh, requiring oats to be weighed by the public weighmaster before being offered for sale, and imposing a penalty for its violation, is not unconstitutional, but valid. Raleigh v. Sorrell, 46 N. C. 49 (1853).

Requirement That Cotton Be Weighed—Fee.—A town ordinance providing that the commissioners shall elect a cotton-weigher who shall receive eight cents compensation for every bale weighed by him, one-half to be paid by the buyer and the other by the seller, and prescribing a penalty for buying or selling in the corporate limits without having it weighed by such cotton-weigher, is a valid and reasonable regulation. State v. Tyson, 111 N. C. 687, 16 S. E. 238 (1892).

§ 160-54. Repair of streets and bridges.—The board of commissioners shall provide for keeping in proper repair the streets and bridges in the town, in the manner and to the extent they may deem best; may cause such improvements in the town to be made as may be necessary: Provided, however, so long as the maintenance of any streets and/or bridges within the corporate limits of any town be taken over by the State Highway Commission, such town shall not be responsible for the maintenance thereof and shall not be liable for injuries to persons or property resulting from the failure to maintain such streets and bridges. (R. C., c. 111, s. 16; Code, s. 3803; Rev., s. 2930; C. S., s. 2675; 1949, c. 862; 1957, c. 65, s. 11.)

I. In General.
II. Use, Repair and Improvement.
  A. Use.
  B. Duty to Repair.
  C. Liability for Damage to Property.
  D. Rights of Abutting Owner.
III. Grade Crossings, Viaducts, etc.
IV. Liability for Defects or Obstructions Causing Injury.

Cross References.

As to power of Utilities Commission to regulate and abolish grade crossings, see § 62-39. As to power of city to acquire land by purchase or condemnation for street purposes, see §§ 160-204, 160-205, and § 160-200, subdivision (11). As to street and sidewalk improvement, see also § 160-78 et seq., and § 160-222 et seq. As to maintenance of streets constructed by the State Highway Commission in towns of less than three thousand, see § 136-18, subdivision (7).

I. IN GENERAL.

Editor's Note.—The 1949 amendment added the proviso. For brief comment on amendment, see 27 N. C. Law Rev. 474.

A discretionary power is conferred by this section and will not be interfered with unless abused. In numerous and repeated decisions the principle has been announced and sustained that the courts may not interfere with discretionary powers conferred on these local administrative boards for the public welfare unless their action is so clearly unreasonable as to amount to an oppressive and manifest abuse of discretion. Munday v. Newton, 167 N. C. 656, 83 S. E. 695 (1914).

Applied in Taylor v. Hertford, 253 N. C. 541, 117 S. E. (2d) 469 (1960); Whitley v. Durham, 256 N. C. 106, 122 S. E. (2d) 784 (1961).

II. USE, REPAIR AND IMPROVEMENT.

A. Use.

Use for Other Purposes.—"While it is the duty of a municipal corporation to use reasonable care to keep its streets in a safe condition to drive upon, it has the right to devote the sides of the streets to other useful public purposes, provided it leaves an unobstructed driveway of ample width for the passage of teams. It may construct sidewalks for a higher grade and gutters of a lower grade than the driveway, place curbing on the line of the gutters, erect hydrants and authorize the erection of hitching posts and stepping stones as well as poles to support the wires of telegraph and telephone lines." Dougherty v. Horseheads, 159 N. Y. 154, 53 N. E. 799 (1912), quoted in Rollins v. Winston-Salem, 176 N. C. 411, 97 S. E. 211 (1918).

B. Duty to Repair.

The duty of keeping the streets repaired devolves upon the municipality functioning through the proper officials. In Bunch v. Edenton, 90 N. C. 531 (1886), the court said that it is the positive duty of the corporate authorities of a town to keep the streets, including the sidewalks, in "proper repair," that is, in such condition as that the people passing and repassing over them might at all times do so with reasonable ease, speed and safety. Positive nuisances on or near the streets should be forbidden under proper penalties, and, when they exist, should be abated. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Streets shall be kept in proper repair to the extent that this can be accomplished by proper and reasonable care and continuing supervision. Willis v. New Bern, 191 N. C. 507, 132 S. E. 286 (1926); Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

This duty extends to streets dedicated and accepted by the municipality but not to streets or portions of streets not accepted by it although dedicated by some individual. Hughes v. Clark, 134 N. C. 457, 46 S. E. 956, 47 S. E. 462 (1904).

And to Sidewalks.—The rights, powers, and liability of the municipality extend equally to the sidewalk as to the roadway, for both are parts of the street; and towns and cities are held to the same degree of liability for failure to repair sidewalks as to repair the other part of the street. Bunch v. Edenton, 90 N. C. 431 (1886); Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894); Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264 (1894); Russell v. Monroe, 116 N. C. 720, 21 S. E. 550, 47 Am. St. Rep. 823 (1895); Neal v. Marion, 129 N. C. 345, 40 S. E. 116 (1901); Hester v. Traction Co., 138 N. C. 288, 50 S. E. 711 (1905).

Guarding against Perilous Places.—Proper repair implies that all bridges, dangerous pits, embankments, dangerous walls, and the like perilous places and things very near and adjoining the streets shall be guarded against by proper railings and barriers or other reasonably necessary signals for the protection of the public. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905); Willis v. New Bern, 191 N. C. 507, 132 S. E. 286 (1926); Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

Commissioners' Duty.—This section does not impose on the commissioners the duty to personally work the streets but it does impose on them a duty to keep them in repair. Although the power allows discretion, the commissioners are subject to indictment for neglecting to keep public streets in repair. State v. Dickson, 124 N. C. 871, 32 S. E. 961 (1899).

Contracts with and Duties of Public Service Companies to Repair.—A city may by contract with a street railroad provide for the repair of the street between the tracks, as a consideration for the franchise, and the railroad will be required to repair and keep its part in the same condition as the rest of the street. New Bern v. Atlantic, etc., R. Co., 159 N. C. 542, 75 S. E. 807 (1912).

Pipes, conduits, rails, and structures

erected or constructed in the city streets under a general grant of authority to use the streets therefor are subject to the paramount power and duty of the city to repair, alter, and improve the streets, as the city, in its discretion, may deem proper, and to construct therein sewers and other improvements for the public benefit. Raleigh v. Carolina Power Co., 180 N. C. 234, 104 S. E. 462 (1920).

C. Liability for Damage to Property.

General Rule.—Where a municipal corporation has authority to grade its streets it is not liable for consequential damage, unless the work was done in an unskillful and incautious manner. Meares v. Wilmington, 31 N. C. 73 (1848). This holding has been approved and followed in many subsequent cases. Salisbury v. Western North Carolina Railroad, 91 N. C. 490 (1884); Wright v. Wilmington, 92 N. C. 160 (1885); Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894); Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264 (1894); Brown v. Electric Co., 138 N. C. 533, 51 S. E. 62 (1905); Small v. Edenton, 146 N. C. 527, 60 S. E. 413 (1908); Ward v. Commissioners, 146 N. C. 534, 60 S. E. 418 (1908); Jones v. Henderson, 147 N. C. 120, 60 S. E. 894 (1908). In Thomason v. Seaboard, etc., R. Co., 142 N. C. 300, 55 S. E. 198 (1906), the subject is referred to as "the settled doctrine of this State." Dorsey v. Henderson, 148 N. C. 423, 62 S. E. 547 (1908).

Shade Trees Cut While Grading.—The discretionary power of repairing and maintaining a street is vested in the commissioners of a city, and an action for damages caused by cutting of trees in the street, by them, will not lie in favor of an abutting property owner, in the absence of negligence, malice or wantonness. Tate v. Greensboro, 114 N. C. 392, 19 S. E. 767 (1894).

D. Rights of Abutting Owner.

To Remove Nuisance.—When a street is repaired or changed by a city so as to damage an owner of the fee in the street or to cause a nuisance the owner has no right to change the condition of the street so as to remove the nuisance or lessen the damage, and such act will subject him to indictment. State v. Wilson, 107 N. C. 865, 12 S. E. 320 (1890).

Ratification by City.—However, it may be pointed out incidentally that when an unauthorized person does an act of repair to streets that might have been done by a city, a ratification by the city will relieve him of any liability as a trespasser. Wolfe v. Pearson, 114 N. C. 621, 19 S. E. 264 (1894).

III. GRADE CROSSINGS, VIADUCTS, ETC.

Power to Regulate.—The right of the city government, both under its police powers and the several statutes applicable to require railroads to construct bridges or viaducts, along streets running over their tracks, is fully established in this jurisdiction and is recognized in well-considered cases elsewhere. Atlantic, etc., R. Co. v. Goldsboro, 155 N. C. 356, 71 S. E. 514 (1911); Powell v. Seaboard Air Line R. Co., 178 N. C. 243, 100 S. E. 424 (1919); Northern P. R. Co. v. Minnesota, 208 U. S. 583, 28 S. Ct. 341, 52 L. Ed. 630 (1908).

A city has both inherent power and authority by general statute over its streets for the protection of its citizens, which is not taken from it by § 62-50, conferring like powers upon the Utilities Commission. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17 (1923).

The exercise by the State of its power to provide for the safety of its citizens with respect to grade crossings of its streets by a railroad company is within its police powers, and may be exercised by municipal corporations under authority conferred on them, and not being delegated to the national government, it is not affected by federal legislation upon interstate commerce or the Federal Transportation Act. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17 (1923), affirmed in Southern R. Co. v. Durham, 266 U. S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

A city charter giving a city specific authority to erect gates at a railroad crossing, or to require the railroad company to place a flagman there to warn pedestrians, with provision that such authority shall not be exclusive, does not limit the authority of the city therein, or take from it the inherent and statutory right to require that the railroad company construct an underpass for the protection of the public. Durham v. Southern R. Co., 185 N. C. 240, 117 S. E. 17 (1923).

In 2 N. C. Law Rev. 104, referring to the case immediately preceding, it was said: "The result of the decisions, so far as the question of substantive law is concerned, is that a municipal corporation may, under its charter or by general law, by proper ordinance, require a railroad company to construct, at its own expense, such crossings for the streets as will best promote the public safety in the use of the streets; that the nature of the crossing to be constructed is within the reasonable discretion of the municipal authorities, and that the presumption is in favor of the validity of the city ordinance."

Cited in Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695 (1889).

IV. LIABILITY FOR DEFECTS OR OBSTRUCTIONS CAUSING INJURY.

This section imposes on a municipality the positive duty to maintain its streets in a reasonably safe condition for travel, and negligent failure to do so will render it liable to private action for proximate injury. Bunch v. Edenton, 90 N. C. 431 (1884); Russell v. Monroe, 116 N. C. 720, 121 S. E. 550, 47 Am. St. Rep. 823 (1895);

Neal v. Marion, 129 N. C. 345, 40 S. E. 116 (1901); Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905); Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923); Michaux v. Rocky Mount, 193 N. C. 550, 137 S. E. 663 (1927); Speas v. Greensboro, 204 N. C. 239, 167 S. E. 807 (1933); Radford v. Asheville, 219 N. C. 185, 13 S. E. (2d) 256 (1941); Waters v. Belhaven, 222 N. C. 20, 21 S. E. (2d) 840 (1942); Millar v. Wilson, 222 N. C. 340, 23 S. E. (2d) 42 (1942); Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

The governing authorities of a town or city have the duty imposed upon them by law of exercising ordinary care to maintain its streets and sidewalks in a condition reasonably safe for those who use them in a proper manner. Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

But Municipality Is Not Insurer of Condition of Streets.—While it is the duty of the city to keep its streets in such repair that they are reasonably safe for public travel, it is not an insurer of such condition nor does it warrant that they shall at all times be absolutely safe. A city is only responsible for a negligent breach of duty. Fitzgerald v. Concord, 140 N. C. 110, 5 S. E. 309 (1905).

Duty to Take Measures to Avert Injury.—Negligent failure to take such measures as ordinary prudence requires to avert injury, where the municipality has actual or imputable knowledge of the dangerous condition, will render municipality liable for injury proximately caused. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

By Exercise of Proper Care and Continuing Supervision.—In Willis v. New Bern, 191 N. C. 507, 132 S. E. 286 (1926) it is said that streets shall be constructed in a reasonably safe manner, and to this end ordinary care must be exercised at all times. They shall be kept in proper repair or in a reasonably safe condition to the extent that this can be accomplished by proper and reasonable care and continuing supervision. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

Liability arises only for a negligent breach of duty. Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

Necessity for Notice of Defect.—Since the liability depends upon the negligence of the city, it is evident that before such negligence can exist the city must have had notice of the defect or with the exercise of reasonable diligence would have had notice of it. Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675 (1899).

Plaintiff Must Prove Notice.—So in order to establish responsibility, it is not sufficient to show that a defect existed and an injury has been caused thereby. It must be further shown that the officers of the town "knew, or by ordinary diligence might have discovered, the defect, and the character of the defect was such that injuries to travelers therefrom might reasonably be anticipated." Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675 (1899); Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905); Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

Implied Notice.—When observable defects in a highway have existed for a time so long that they ought to have been observed, notice of them is implied. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Actual notice of a defect is not required. Notice of a dangerous condition in a street or sidewalk will be imputed to the town or city, if its officers should have discovered it in the exercise of due care. Faw v. North Wilkesboro, 253 N. C. 406, 117 S. E. (2d) 14 (1960).

Same—Question for Jury.—On the question of notice implied from the continued existence of a defect, no definite or fixed rule can be laid down as to the time required and it is usually a question for the jury on the facts and circumstances of each particular case. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Notice of Latent Defects.—Notice of latent defects should not be so readily presumed from their continuance as open and obvious defects. Fitzgerald v. Concord, 140 N. C. 110, 52 S. E. 309 (1905).

Obstructions.—A city does not have discretionary power to put obstructions in its streets, and it is liable for its negligence in putting or leaving obstructions in the street to one injured by such obstruction. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923).

Same—Bridges Must Be as Wide as Street.—A city under the authority of this section in building and repairing streets has no right in building a bridge to obstruct the street with concrete pilasters, and for injuries caused by such obstruction it is liable. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923).

Same—Joint Liability with Private Individual.—If any person shall unlawfully erect an obstruction or nuisance in the streets of a city, and the town authorities shall permit it to remain an unreasonable length of time, the town and the tort-feasor are jointly and severally liable to the traveler for an injury resulting therefrom, without any fault on his part. The question of primary and secondary liability is for the offending parties to adjust between themselves. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548 (1899).

Independent Contributory Cause.—When two causes combine to produce an injury to a traveler on a highway, both of which are in their nature proximate—the one being a culpable defect in the highway, and the other some occurrence for which neither party is responsible—the municipality is liable, provided the injury would not have been sustained but for such defect. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548 (1899).

Failure to Light Street.—While a city may not be under legal necessity of lighting its streets at all, where it does maintain street lights its failure to provide lighting which is reasonably required at a particular place because of the dangerous condition of street is negligent failure to discharge its duty to maintain the streets in a reasonably safe condition for travel. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

City Cannot Plead Governmental Immunity.—A municipality cannot, with impunity, create in its streets a condition palpably dangerous, neglect to provide the most ordinary means of protection against it, and avoid liability for proximate injury on the plea of governmental immunity. Hunt v. High Point, 226 N. C. 74, 36 S. E. (2d) 694 (1946).

As an exception to the doctrine of governmental immunity, it has been uniformly held in this jurisdiction that municipalities may be held liable in tort for failure to maintain their streets in a reasonably safe condition, and they are now required by this section to do so. Clark v. Scheld, 253 N. C. 732, 117 S. E. (2d) 838 (1961).

§ 160-55. Abatement of nuisances.—The board of commissioners may pass laws for abating or preventing nuisances of any kind, and for preserving the health of the citizens. Provided, however, it shall not be a nuisance for an employee or servant of a railroad company to make necessary smoke when stoking or operating a coal burning locomotive. (R. C., c. 111, s. 15; Code, s. 3802; Rev., s. 2929; C. S., s. 2676; 1949, c. 594, s. 1.)

Cross References.—As to zoning laws see § 160-172 et seq. As to water sanitation, see § 130-157 et seq. As to sewer sanitation, see § 130-157 et seq. As to abatement of menaces to health and nuisances, see §§ 160-234 and 130-20.

Editor's Note.—The 1949 amendment added the proviso. For brief comment on amendment, see 27 N. C. Law Rev. 474.

Liberal Construction of Authority.—Authority to abate nuisances is liberally construed by the courts for the benefit of the citizens. State v. Beacham, 125 N. C. 652, 34 S. E. 447 (1899).

Encroachment on Street by Buildings.—Any permanent structure or purpresture which materially encroaches upon a public street and impedes travel is a nuisance per se, and may be abated, notwithstanding space is left for the passage of the public, and a failure on the part of a city to abate it in a reasonable time will make it liable as a joint tort-feasor. Graham v. Charlotte, 186 N. C. 649, 120 S. E. 466 (1923).

Health Ordinances.—A city has power to require that a dealer in second-hand clothing turn them over to the city to be disinfected and the exercise of the power cannot be considered as a restriction of an owner over his property, but is only the proper and lawful use of authority to protect the health of its citizens from diseases. Rosenbaum v. New Bern, 118 N. C. 83, 24 S. E. 1 (1896).

Hog Pens.—"The board of town commissioners could forbid the keeping of hog pens in the town to such an extent as they might deem necessary to prevent nuisances to the public, and, indeed, they could have done so without the express authority." State v. Hord, 122 N. C. 1092, 29 S. E. 952 (1898).

Indecent Language or Cursing.—An ordinance which forbids the use of "abusive or indecent language, cursing, swearing or any loud or boisterous talking, hallooing or any other disorderly conduct" within the corporate limits of a town, and imposes a fine of twenty-five dollars for a violation of it, may be enacted by proper authorities under the powers granted to them in the general law, especially under this section and such an ordinance is reasonable. State v. Merritt, 83 N. C. 677 (1880); State v. McNinch, 87 N. C. 567 (1882); State v. Cainan, 94 N. C. 880 (1886); State v. Earnhardt, 107 N. C. 789, 12 S. E. 426 (1890).

Storage of Gasoline.—See Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. (2d) 838 (1939).

Liability for Failure to Abate.—A municipal corporation is not civilly liable for the failure to pass ordinances to preserve the public health or otherwise promote the public good nor for any omission to enforce the ordinances enacted under the legislative powers granted in its charter, or to see that they are properly observed by its citizens, or those who may be resident within the corporate limits. Bunch v. Edenton, 90 N. C. 431 (1886); Hull v. Roxboro, 142 N. C. 453, 55 S. E. 351, 12 L. R. A. (N. S.) 638 (1906); Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849 (1912).

But a city is liable in damages for failure to abate in a reasonable time a nuisance that amounts to an obstruction in a street. Dillon v. Raleigh, 124 N. C. 184, 32 S. E. 548 (1899).

Compensation.—An owner of property is not entitled to compensation for property rightfully destroyed or damaged by a city in abating a nuisance; the reason for this is that the destruction or damage is for public safety or health and is not a taking of private property for public use without compensation or due process in the constitutional sense. Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

But a municipality is liable for impairing, removing or destroying property, ostensibly in the abatement of a nuisance, where the thing or condition in question is not a nuisance per se, under statute or in fact, or where the thing or condition has not been declared to be a nuisance. Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

Cited in Jones v. Greensboro, 124 N. C. 310, 32 S. E. 675 (1899).

Article 5.

Municipal Taxation.

§ 160-56. Commissioners may levy taxes.—The board of commissioners may annually levy and cause to be collected for municipal purposes an ad valorem tax not exceeding the limitation expressed in § 160-402, and one dollar on each poll, on all persons and property within the corporation, which may be liable to taxation for State and county purposes; and may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law; and may lay a tax on all such shows and exhibitions for reward as are taxed by the General Assembly; and on all dogs, and on swine, horses and cattle, running at large within the town: Provided, however, the board of commissioners may readopt any existing ordinance or ordinances levying, assessing, imposing and defining the license and privilege taxes of any city by reference, without reading the same in detail, and by the reading of any amendments or additions thereto. (R. C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C. S., s. 2677; 1949, c. 933.)

Cross References.—As to listing and collection of municipal taxes, see § 160-261 et seq. As to prohibition against municipality levying income and inheritance taxes, see § 105-247. As to power to license pawnbrokers, see §§ 91-2 and 105-50.

Editor's Note.—The 1949 amendment added the proviso.

Application Where Charter Indefinite.—Since this section is applicable to all cities and towns except where their charters otherwise provide, a town whose charter provides that it shall have all the privileges and rights allowed to the most favored town in the State, will be presumed to have the power to levy taxes under this section although the charter is indefinite. Wadesboro v. Atkinson, 107 N. C. 317, 12 S. E. 202 (1890).

Same—When Only Restrictive.—Where a town charter is not passed in accordance with Art. II, § 14 of the Constitution the charter is valid but such town cannot levy any tax under said charter, although the charter may contain restrictions on the power to tax that are valid, under Art. VII, § 4 of the Constitution. The town may for necessary expense levy taxes under this section subject to the restrictions of the charter. Cotton Mills v. Waxhaw, 130 N. C. 293, 41 S. E. 488 (1902).

When There Is No Special Statute.—When there is no provision for taxes in the charter of a town, taxes necessary to the expenses of the town may be levied under this section. If there is a provision in the charter for levying taxes, all taxes levied will be presumed to conform to the law and the Constitution, Art. VII, § 7. State v. Irvin, 126 N. C. 989, 35 S. E. 430 (1900).

Taxes on Trades and Professions.—Since the enactment of this section taxes laid upon trades and professions under the name of privilege taxes have been laid expressly for revenue, and such taxes are authorized by this section. State v. Irvin, 126 N. C. 989, 35 S. E. 430 (1900).

The power to levy a tax on all trades includes "any employment or business embarked into for gain or profit." Lenoir Drug Co. v. Lenoir, 160 N. C. 571, 76 S. E. 480 (1912).

Unless inconsistent with a special law or charter of a city a tax may be levied under this section, on a person engaging in any trade within the city. Guano Co. v. Tarboro, 126 N. C. 68, 35 S. E. 231 (1900).

A manufacturer of fertilizers maintaining its sales department in another state from which sales are exclusively made for fertilizer stored for distribution only, in a city in this State, is liable under an ordinance of the city levying a tax upon callings and professions, naming among others "fertilizer manufacturers' agents or dealers," the tax being for the protection afforded by the city in the exercise of such occupation, and the profits derived therefrom. Guano Co. v. New Bern, 158 N. C. 354, 74 S. E. 2 (1912).

Same—Classification.—A municipal corporation is empowered to tax trades or professions carried on or enjoyed within the city, unless otherwise provided by law, but its classification of trades and professions for taxation must be based upon reasonable distinctions and all persons similarly situated must be treated alike. Kenny Co. v. Brevard, 217 N. C. 269, 7 S. E. (2d) 542 (1940).

The law of uniformity does not prohibit the classification by the municipality of dealers in a particular kind of merchandise separately from those whose business it is to sell other articles falling within the same generic term. Rosenbaum v. New Bern, 118 N. C. 83, 24 S. E. 1 (1896).

But an ordinance requiring a license of livery men, and providing that it shall include any persons making contract for hire in town, or "any person carrying any person with a vehicle out of town for hire," is void as being unreasonable. Plymouth v. Cooper, 135 N. C. 1, 47 S. E. 129 (1904).

Money and Choses in Action Subject to Tax.—The word "property," includes moneys, credits, investments and other choses in action. Redmond v. Commissioners, 106 N. C. 122, 10 S. E. 845 (1890).

Taxes on Lottery Applied Strictly.—A city having power to levy a heavy tax on "gift enterprises" must restrict this tax to enterprises that are of a lottery nature. A dealer in trading stamps cannot be taxed, for the tax cannot be applied to a business merely because of its peculiarity. Winston v. Beeson, 135 N. C. 271, 47 S. E. 457 (1904).

Tax on Firm Outside City.—Construing the charter of a city in pari materia with this section, the city is given power to tax a firm outside the city, but which delivers products inside the city to customers procured by its salesman, and collects for its goods upon delivery, such trade being "carried on or enjoyed within the city." Hilton v. Harris, 207 N. C. 465, 177 S. E. 411 (1934).

The charter of a city giving it certain powers in respect to the levying of franchise taxes on trades and professions, etc., and this section will be construed together in determining the legislative grant of power to the municipality to levy taxes of this class. Hilton v. Harris, 207 N. C. 465, 177 S. E. 411 (1934); State v. Bridgers, 211 N. C. 235, 189 S. E. 869 (1937).

Limitation on License Tax on Use of Motor Vehicle.—Section 20-97 expressly prohibits a municipality from levying a license or privilege tax in excess of $1.00 upon the use of any motor vehicle licensed by the State, and must be construed with and operates as an exception to, and limitation upon the general power to levy license, and privilege taxes upon businesses, trades and professions granted by charter and this section, and provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the $1.00 theretofore imposed by it upon motor vehicles generally, is void, nor may the additional municipal tax be sustained upon the theory that it is a tax upon the business of operating a motor vehicle for hire rather than ownership of the vehicle, since the word "business" and the word "use" as used in the sections mean the same thing. Cox v. Brown, 218 N. C. 350, 11 S. E. (2d) 152 (1940).

Cited in Love v. Raleigh, 116 N. C. 296, 21 S. E. 503 (1894), dissenting opinion of Clark, J., in Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343 (1898), which was followed when case was overruled in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029 (1903).

§ 160-57. Uniformity of taxes.—All taxes levied by any county, city, town, or township shall be uniform as to each class of property taxed in the same, except property exempted by the Constitution. (Const., art. 7, s. 9; Rev., s. 2968; C. S., s. 2678.)

Editor's Note.—This section is based upon what was Art. VII, § 9, of the Constitution prior to its amendment in 1935.

§ 160-58. Dog tax.—If any person residing in a town shall have therein any dog, and shall not return it for taxation, and shall fail to pay the tax according to law, the commissioners, at their option, may collect from the person so failing double the tax, or may treat such dog as a nuisance, and order its destruction. (R. C., c. 111, s. 24; Code, s. 3815; Rev., s. 2971; C. S., s. 2683.)

Cross Reference.—As to taxation of dogs by counties, see § 67-5 et seq.

Tax Is on Privilege of Keeping Dog.—Although a dog is property, a dog tax is not directly on the dog as property but is upon the privilege of keeping a dog. If the tax is not paid the dog may be declared a nuisance and killed. Mowery v. Salisbury, 82 N. C. 175 (1880).

Article 6.

Sale of Municipal Property.

§ 160-59. Public sale by governing body; private sale to other governmental units.—The governing body of any city or town shall have power at all times to sell at public outcry, after thirty days' notice, to the highest bidder, any property, real or personal, belonging to any such town, and apply the proceeds as they may think best: Provided, that when the governing body shall determine that it is in the public interest, municipally-owned personal property, which is surplus, unused or obsolete, may be sold upon sealed bids after one week's public notice, to the highest bidder. Sealed bid proposals shall be opened in public and recorded on the minutes of the governing body. The public notice shall state the time and place for opening of proposals and shall reserve to the governing body the right to reject all bids.

Provided further, the governing body of any city or town may dispose of any municipally-owned personal property at private sale to any other governmental unit, or agency thereof, within the United States.

The powers granted herein are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns. (1872-3, c. 112; Code, s. 3824; Rev., s. 2978; C. S., s. 2688; 1957, c. 697, s. 1; 1959, c. 862.)

Local Modification.—Craven: 1955, c. 1278; Alexander, Washington, and the town of Lillington in Harnett County: 1941, c. 292; 1943, c. 128; city of Reidsville: 1949, c. 323; city of Rocky Mount: 1955, c. 499, s. 4; city of Statesville: 1955, c. 593; city of Wilmington: 1953, c. 321; town of Morganton: 1959, c. 1037; town of Murfreesboro: 1959, c. 1198; towns of Spencer and East Spencer in Rowan County: 1953, c. 378; town of Troy: 1955, c. 46.

Cross References.—As to when sale at public outcry is not necessary, see § 160-2, subdivision (6). As to municipality's power to sell or lease property generally, see § 160-200.

Editor's Note.—The 1957 amendment added the proviso and the last two sentences of the first paragraph. Section 2 of the 1957 amendatory act provides: "The powers granted herein are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns."

The 1959 amendment rewrote this section.

What Real Estate May Be Sold.—In Southport v. Stanly, 125 N. C. 464, 34 S. E. 641 (1899), the court says: The reasonable construction of the statute must be that the town or city authorities can sell any personal property, or sell or lease any real estate which belongs to a town or city, as the surplus of the original acreage ceded for the town or city site, or such land as may have been subsequently acquired or purchased. But in no case can the power be extended to the sale or lease of any real estate which is to be held in trust for the use of the town, or any real estate which is devoted to the purpose of government. To enable the town to sell such real estate there must be a special act of the General Assembly authorizing such sale or lease. Brockenbrough v. Board, 134 N. C. 1, 46 S. E. 28 (1903).

In Moose v. Carson, 104 N. C. 431, 10 S. E. 689 (1889), it was held that when a city conveys land bounded by an established street, and the grantee enters upon and improves the land, a subsequent conveyance by the corporation of the land covered by the street, whereby the easement of the appurtenant owner is interfered with, is void. But where there have been no improvements made on a dedicated street and the dedicated land has never been used as a street, a city by an act of legislature conferring authority may sell and convey the lands so dedicated to it for street purposes. Church v. Dula, 148 N. C. 262, 61 S. E. 639 (1908).

Public Notice of Actual Partition of Land Not Required.—This section requires public notice only in respect to the sale of property belonging to a municipality. It has no application to actual partition of land in which a municipality owns an interest. Actual partition between tenants in common involves no sale or disposal of land or any interest therein. Craven County v. First-Citizens Bank & Trust Co., 237 N. C. 502, 75 S. E. (2d) 620 (1953).

A contract for removal of sludge from city's sewerage disposal plant was held to relate to a service and not a sale of city property within the meaning of this section, requiring sale of city property to be made by auction. Plant Food Co. v. Charlotte, 214 N. C. 518, 199 S. E. 712 (1938).

Real Estate Agent May Be Employed.—As incidental to the power of a municipal corporation to sell at public auction parcels of land acquired by it by foreclosure of tax and street assessment liens, the municipality has the authority, in the exercise of its discretion in determing the means for accomplishing this purpose, to employ a real estate agent upon commission to obtain a responsible bidder at the sale to bid a sum sufficient to protect the municipality's interest. Cody Realty, etc., Co. v. Winston-Salem, 216 N. C. 726, 6 S. E. (2d) 501 (1940).

Sale of Swimming Pool to Avoid Operating on Integrated Basis.—Where a municipality sought to sell public swimming pools under the provisions of this section and other legislative authority, the contention that there was a denial of equal rights where the purpose of the closing or sale was to avoid the necessity of operating the facilities on a racially integrated basis was not sustained. If the swimming pools were disposed of through a bona fide public sale, and there was no evidence to the contrary in the instant case, there could be no unequal treatment and, therefore, no racial discrimination. Tonkins v. Greensboro, 162 F. Supp. 549 (1958).

Applied in Mullen v. Louisburg, 225 N. C. 53, 33 S. E. (2d) 484 (1945).

Cited in Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328 (1939); Karpark Corp. v. Graham, 99 F. Supp. 124 (1951).

§ **160-60. Sale by county commissioners.**—In any town where there is no mayor or commissioners, the board of county commissioners shall have the power given in the preceding section. (1872-3, c. 112, s. 2; Code, s. 3825; Rev., s. 2979; C. S., s. 2609.)

§ 160-61. Title made by mayor.—The mayor of any town, or the chairman of any board of commissioners of any town or county, is fully authorized to make title to the purchaser of any property sold under this chapter. (1872-3, c. 112, s. 3; Code, s. 3826; Rev., s. 2980; C. S., s. 2690.)

§ 160-61.1. Certain counties and municipalities authorized to execute warranty deeds; relief from personal liability.—(a) The governing bodies of counties and municipal corporations are hereby authorized and empowered to execute and deliver conveyances to any property, whether acquired by tax or assessment foreclosure or otherwise, with full covenants of warranty whenever in the discretion of said governing bodies it is to the best interest of said counties or municipal corporations to convey by warranty deed.

(b) Members of the governing bodies of counties and municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of any such conveyances with covenants of warranty.

(c) This section shall apply only to Wake County and the municipal corporations therein, Forsyth County and the municipal corporations therein, Rowan County and the municipal corporations therein, and to the following named counties and the municipal corporations therein, to-wit: Beaufort, Bertie, Bladen, Davidson, Edgecombe, Franklin, Gates, Halifax, Lenoir, Nash, New Hanover, Orange, Pender, Richmond, Union, Warren, Wayne, Wilson. (1945, c. 962; 1955, c. 935.)

Editor's Note.—The 1955 amendment inserted Warren in the list of counties appearing in subsection (c) of this section.

ARTICLE 7.

General Municipal Debts.

§ 160-62. Popular vote required, except for necessary expense.—No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied, or collected by any officer of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein. (Const., art. 7, s. 7; Rev., s. 2974; C. S., s. 2691.)

Cross References.—As to purposes for which bonds may be issued, see § 160-378. As to necessity of approval of bond issue by Local Government Commission, see § 159-7. As to election on bond issue, see § 160-387. As to restrictions upon power of municipality to borrow or spend, see § 160-399.

Editor's Note.—For cases under this section, see Art. VII, § 7 of the Constitution, as it is the same as to this section. See also Art. II, § 14 of the Constitution.

Section Emphasizes Observance of Constitution.—The necessity of a rigid observance of Const., Art. VII, § 6, has been emphasized by this section. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

"Necessary Expense."—The term "necessary expense" more especially refers to the ordinary and usual expenditures reasonably required to enable a county to properly perform its duties as part of the State government. Horton v. Redevelopment Comm. of High Point, 259 N. C 605, 131 S. E. (2d) 464 (1963).

Necessary expenses involve and include the support of the aged and infirm, the laying out and repair of public highways, the construction of bridges, the maintenance of the public peace, and administration of public justice—expenses to enable the county to carry on the work for which it was organized and given a portion of the State's sovereignty. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Where the purpose for which a proposed expense is to be incurred by a municipality is the maintenance of public peace or administration of justice, or partakes of a governmental nature, or purports to be an exercise by the municipality of a portion of the State's delegated sovereignty, the expense is a necessary expense within the Constitution, and may be incurred without a vote of the people. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Is Question for Court.—What are necessary expenses for a municipal corporation for which it may contract a debt, pledge its faith, or loan its credit and levy a tax without an approving vote of a majority of those who shall vote thereon in an election held for such purpose, is a question for the court. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Cited in Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938); Karpark Corp. v. Graham, 99 F. Supp. 124 (1951).

§ **160-63. Debts paid out of tax funds.**—Debts contracted by a municipal corporation in pursuance of authority vested in it shall not be levied out of any property belonging to such corporation and used by it in the discharge and execution of its corporate duties and trusts, nor out of the property or estate of any individual who may be a member of such corporation or may have property within the limits thereof. But all such debts shall be paid alone by taxation upon subjects properly taxable by such corporation: Provided, that whenever any individual, by his contract, shall become bound for such debt, or any person may become liable therefor by reason of fraud, such person may be subjected to pay said debt. (1870-1, c. 90; Code, s. 3821; Rev., s. 2975; C. S., s. 2692.)

Applied in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029 (1903).

§ **160-64. Debts limited to ten per cent of assessed values.**—It shall be unlawful for any city or town to contract any debt, pledge its faith or loan its credit for the construction of railroads, the support or maintenance of internal improvements or for any special purpose whatsoever, to an extent exceeding in the aggregate ten per cent of the assessed valuation of the real and personal property situated in such city or town. And the levy of any tax to pay any such indebtedness in excess of this limitation shall be void and of no effect. (1889, c. 486; Rev., s. 2977; C. S., s. 2693.)

Constitutionality.—This section is constitutional, not being in conflict with Art. VII, § 7 of the Constitution. Wharton v. Greensboro, 146 N. C. 356, 59 S. E. 1043 (1907).

May Be Repealed in Part or in Toto.—This limitation is statutory and not a constitutional one; therefore, the legislature may repeal it in toto or only in its application to certain cities and towns. The fact that a bond issue was in excess of the limitation will not invalidate it if it is later ratified by State legislature. Wharton v. Greensboro, 149 N. C. 62, 62 S. E. 740 (1908).

Only Applicable to Special Purposes.—This section does not apply to indebtedness for necessary expenses nor to bonds to pay debts contracted for necessary expenses, but applies to "special purposes" which are construed to mean enterprises not necessary to the city government. Wharton v. Greensboro, 146 N. C. 356, 59 S. E. 1043 (1907); Underwood v. Asheville, 152 N. C. 641, 68 S. E. 147 (1910); Charlotte v. Trust Co., 159 N. C. 388, 74 S. E. 1054 (1912).

ARTICLE 8.

Public Libraries.

§ **160-65. Establishment of library.**—The governing body of any county or municipality may, in its discretion, establish and support a free public library, using for such establishment and support any nontax revenues which may be available for such purposes. The word "support" as used in this article shall include, but is not limited to, purchase of land for library buildings, the purchase and renovation of buildings for library purposes, the construction of buildings for library purposes, purchase of library books, materials and equipment, compensation of library personnel, and all maintenance expenses for library property and equipment. Property taxes may be used for the support of public library services when the approval of the voters for the levy of a tax has been approved as provided in § 160-72 of this article or as may be provided in any special act. (1953, c. 721; 1963, c. 945.)

Cross Reference.—As to power of counties to appropriate money for libraries, see § 153-9, subdivision (37).

Editor's Note.—This article, effective July 1, 1963, was rewritten by Session Laws 1963, c. 945. It was previously rewritten by Session Laws 1953, c. 721; by Session Laws 1953, c. 1102, s. 3, former §§ 160-68, 160-69 were rewritten and redesignated as §§ 125-27 and 125-28.

§ **160-66. Library free.**—The use of every library established under this article shall be forever free to the inhabitants of the county or municipality providing or contracting for library services, subject to such reasonable rules and regulations as may be adopted by the board of trustees of the library and approved by the governing body of the county or municipality. (1953, c. 721; 1963, c. 945.)

§ **160-67. Library trustees appointed.**—For the government of each library established by a county or municipality there shall be a board of six trustees appointed by the governing body of the county or municipality, chosen from the citizens at large with reference to their fitness for such office. For the initial term, two members shall be appointed for terms of two (2) years, two members for terms of four (4) years, and two members for terms of six (6) years, and until their successors are appointed and qualified. Thereafter the terms of members shall be for six (6) years and until their successors are appointed and qualified. The governing body of the county or municipality may, in its discretion, designate one of its own members to serve ex officio as one of the six (6) members of the library board in addition to his other duties. Such governing body member shall serve on the library board for the duration of his term of office and shall have full rights, duties and responsibilities as a member of the board. All vacancies on the board shall be immediately reported by the trustees to the governing body which shall fill each vacancy for the unexpired term. The governing body of the county or municipality may remove any trustee for incapacity, unfitness, misconduct, or for neglect of duty. Members of the board shall serve without compensation. (1953, c. 721; 1963, c. 945.)

Local Modification.—City of Concord: 1959, c. 528; city of High Point: 1961, c. 712.

§ **160-68. Joint libraries.**—(a) Two or more counties or municipalities, or a county or counties and a municipality or municipalities, may enter into an agreement for the joint performance and support of public library service for the benefit of the citizens of all the participating units. The joint library shall be established according to the terms of a resolution approved by the governing bodies of the participating units. The resolution shall provide for the composition of the board of trustees to govern the library and may contain any additional provisions concerning the operation and responsibility of the joint library on which all the participating units shall agree.

(b) The board of trustees of a joint library shall be composed of not less than six members and not more than twelve members. The resolution establishing the library shall specify the total number of trustees and the number of trustees to be appointed by the governing body of each participating county or municipality. The resolution shall also set forth the terms of office for the trustees, but no term of office shall be for less than two (2) years, nor for more than six (6) years. The governing body of each participating county or municipality shall make its appointments from the citizens at large with reference to their fitness for such office; provided, that such governing body may, in its discretion, designate as one of its members of the joint library board of trustees a member of the governing body to serve ex officio in addition to his other duties, and provided further, that such governing body may in its discretion, if it also supports a county or municipal library, designate one or more of its members of the joint library board of trustees from the membership of such county or municipal library board of trustees, such members to serve ex officio on the joint library board in addition to their other duties. Such governing body member, or county or municipal library board members, shall serve on the joint library board of trustees for the duration of his or their term of office on the governing body, or county or municipal library board, respectively. Any vacancy on the joint library board shall be filled for the unexpired term by the governing body of the county or municipality making the initial appointment. The governing body of any participating county or municipality shall have the power to remove any trustee appointed by it for incapacity, unfitness, misconduct, or neglect of duty. Members of the board shall serve without compensation.

(c) The resolution establishing the joint library shall contain a statement governing the distribution of property between the participating counties and municipalities in the event that any county or municipality should elect to withdraw from the agreement. Any county or municipality wishing to withdraw from participation in joint operation of a library shal give notice to the other participating counties and municipalities by December 31st prior to the beginning of the fiscal year in which it wishes to withdraw participation and support. From and after the expiration of the six months' period, such county or municipality shall be entitled to such proportion of the property of the joint library as may have been agreed upon in the resolution establishing the library. (1953, c. 721; 1963, c. 945.)

Editor's Note.—By Session Laws 1953, c. 1102, s. 3, former §§ 160-68 and 160-69 were rewritten and redesignated as §§ 125-27 and 125-28.

§ **160-69. Contracts with other libraries.**—The governing body of any county or municipality, or the board of trustees of any county or municipal library board with the consent of its governing body, or the board of trustees of a joint library, or the governing board of any corporation or association providing free public library service, may enter into a contract with and make annual appropriations to any county or municipality, county or municipal library, joint library, corporation or association providing free public library service, or other public or private agency providing library services for one or more public library services, including but not limited to the use of physical facilities and library equipment; the purchase, cataloguing and circulation of books, periodicals, recordings and other items and materials customarily acquired and circulated by the public libraries, the services of professionally qualified library personnel, and the provision of any special library service. (1953, c. 721; 1963, c. 945.)

Local Modification.—Rutherford: 1955, c. 799.

Cross Reference.—See note to § 160-68.

§ **160-70. Powers and duties of trustees.**—(a) The board of trustees of a county or municipal library shall organize immediately after its appointment and shall elect one of its members as chairman. It may elect a secretary and a treasurer and such other officers as it may deem necessary, either from the membership of the board or from the employees of the library.

The board of trustees shall have the power

(1) To adopt such bylaws, rules and regulations for its own guidance and for the government of the library as may be necessary and in conformity with law;

(2) With the consent of the governing body of the county or municipality, to lease or purchase and occupy an appropriate building or buildings, or to erect an appropriate building or buildings upon lands acquired by gift, devise or purchase;

(3) To supervise and care for the physical facilities constructed, leased or set apart for library purposes;

(4) To appoint a chief librarian or director of library service, and, upon recommendation of such librarian or director, to appoint assistant librarians and other employees, and to remove such librarians or employees; provided, that no vacancies existing or occurring in the position of chief librarian or director in any such library shall be filled by the appointment or designation of any person who is not certified as a professional librarian by the North Carolina Library Certification Board under the provisions of G. S. 125-9 or G. S. 125-10;

(5) To fix the compensation of the chief librarian or director, and in consultation with such librarian or director to fix the compensation of the assistant librarians and other employees of the library; provided, (i) that all salaries and other compensation for library employees shall be in

accordance with the provisions of any pay plan applying to all employees of the governmental unit and which has been approved by the county or municipal governing board, and, (ii) that all salaries and other compensation for library employees must be in accordance with appropriations for salaries and other compensation for library employees approved by the county or municipal governing body in the annual budget for such county or municipality;

(6) To prepare the annual budget for the library for submission to the governing body of the county or municipality;

(7) To extend the privileges and use of such library to nonresidents of the county or municipality, upon such terms and conditions as it may prescribe.

(b) Except as may be otherwise provided in this article, the board of trustees of a joint library shall have the same powers and privileges as the board of trustees of a county or municipal library. With the consent of the governing bodies of the participating units, the board of trustees of each joint library shall prepare a pay plan governing the compensation of all employees of the joint library.

(c) The board of trustees of every public library shall make an annual report to the governing body of the county or municipality, or counties and municipalities, providing financial support for such library, and shall forward a copy of such report to the North Carolina State Library. (1953, c. 721; 1963, c. 945.)

§ **160-71. Budget adoption and control.**—(a) County or Municipal Library.—The board of trustees of every county or municipal library shall prepare and recommend an annual budget to the governing body of the county or municipality. The budget for the library shall be adopted as part of the county or municipal budget. All monies received for such library shall be paid into the county treasury or the municipal treasury, shall be earmarked for the use of the library, and shall be paid out as other county or municipal funds are paid out; provided, that county or municipal library funds may, in the discretion of the governing board and notwithstanding the provisions of the County or Municipal Fiscal Control Acts, be paid out on warrants signed by the treasurer of the library board or trustees and countersigned by the county accountant or municipal accountant; provided, further, the countersigning officer shall countersign such warrants when they are within the funds earmarked for the library and within the amount of appropriations duly made by the governing body of the county or municipality. Whenever the treasurer of the library board shall sign warrants or otherwise handle monies of the library, he shall, before entering upon his duties, give bond to the county or municipality in an amount fixed by the governing body of such county or municipality, conditioned upon the faithful discharge of his official duties.

(b) Joint Libraries.—The amount each participating governmental unit shall contribute to the establishment and support of a joint library shall be determined annually by agreement between and among the participating counties and municipalities on the basis of a recommended budget submitted to such county and municipal governing bodies by the joint library board of trustees. The county and municipal governing bodies, meeting jointly wherever possible, shall determine their proportionate appropriations on the basis of the overall need for public library service in the area served by the library, the benefits to each participating unit arising from library service, and the funds available in each participating unit to support library service. Each participating county and municipality shall pay over its annual appropriation for joint library purposes to the treasurer of the joint library board of trustees, according to such schedule as may have been agreed upon with the library board. The joint library board of trustees shall adopt a final budget in accordance with the appropriations made to it by the participating counties and municipalities, and any other revenues available to such joint library. The treasurer of the board of trustees of the joint library, before entering upon his duties, shall give bond to the board of trustees in an amount fixed by the board of trustees and approved by the governing bodies of the participating governmental units, conditioned upon the faithful discharge of his duties. All funds, received by the joint library from any source shall be deposited by the treasurer to the account of the library, shall be earmarked for the use of the library, and shall be paid out on warrants signed by the librarian and countersigned by the treasurer. The treasurer shall countersign such warrants only when they are in accordance with the budget adopted by the board of trustees of the joint library and within the funds available to the library. In lieu of paying over all appropriations to the treasurer of the board of trustees of the joint library, the participating counties and municipalities may, in accordance with a resolution agreed to by each such county and municipality, contract for the financial administration of the library to be handled by a single participating county or municipality, in which case the procedures of the County or Municipal Fiscal Control Acts, whichever is applicable, shall apply. The board of trustees of each joint library shall arrange for an annual audit of its financial transactions and shall furnish each participating county or municipality with a copy of such audit. (1953, c. 721; 1963, c. 945.)

§ **160-72. Special tax for library.**—Subsequent to the establishment of a library by a county or municipality, the governing body of the county or municipality may upon its own motion and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen per cent (15%) of the total number of votes cast for the office of Governor in the last preceding general election in such county or municipality, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such library.

Such question shall be submitted to the voters either at the next general election for county officers in the case of a county, or at the next general election for municipal officers in the case of a municipality, or at a special election to be called by the governing body of the county or municipality for that purpose: Provided, that no special election shall be held within sixty (60) days of any general election for State, county or municipal officers. Such special election shall be conducted according to the laws governing general elections for county or municipal officers in such county or municipality.

The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special library tax of not more than .... cents (........¢)."; and "Against the levy of a special library tax of not more than .... cents (........¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such county or municipality, or in the petition requesting such election, which maximum shall in no event exceed fifteen cents (15¢) on the one hundred dollars ($100.00) valuation of property.

If a majority of the qualified voters in such election favor the levy of the tax, the governing body of the county or municipality shall levy and cause to be collected as other general taxes are collected, a special library tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for library purposes approved by the governing body of such county or municipality.

In any county or municipality in which a tax for library purposes has been voted under this section, or under any other general, public-local, private or special law, the governing body of such county or municipality may, on its own motion with the recommendation of the board of trustees of the library, and shall, upon a petition signed by voters of the county or municipality equal in number to at least fifteen per cent (15%) of the total number of votes cast for Governor in the last preceding general election in such county or municipality, submit to the voters of such county or municipality the question of an increase or decrease of such tax, within the limitations of this section. Such question shall be submitted to the voters in the manner provided by this section. (1953, c. 721; 1963, c. 945.)

Local Modification.—Polk: 1959, c. 435.

§ **160-73. Issuance of bonds.**—Counties and municipalities are hereby authorized to issue bonds and notes, and to levy property taxes to meet payments of principal and interest on such bonds or notes, to purchase necessary land and to purchase or construct library buildings and equipment. Counties may issue such bonds or notes under the provisions of the County Finance Act and municipalities may issue such bonds or notes under the provisions of the Municipal Finance Act. (1953, c. 721; 1963, c. 945.)

§ **160-74. Power to take property by gift or devise.**—With the consent of the governing body of the county or municipality, or the governing bodies of the governmental units participating in a joint library, expressed by an appropriate resolution or ordinance, the library board of trustees may accept any gift, grant, devise, or bequest made or offered by any person for library purposes and may carry out the conditions of such donations. The county or municipality, or counties and municipalities participating in a joint library, shall have authority to acquire a site, levy a tax in accordance with and within the limitations set forth in this article, and pledge by ordinance or resolution compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted. (1953, c. 721; 1963, c. 945.)

§ **160-75. Title to property vested in the county or municipality.**—Title to all property given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired by any county or municipality for a library shall vest in and be held in the name of such county or municipality, and any conveyance, grant, donation, devise, bequest or gift to or in the name of any public library board shall be deemed to have been directly to such county or municipality; provided, that when such property is given, granted, or conveyed, donated, devised or bequeathed to, or otherwise acquired for the benefit of or in the name of a joint library, title to such property shall vest in and be held in the names of the participating counties or municipalities in the same proportion as set forth in the resolution establishing the library. (1953, c. 721; 1963, c. 945.)

§ **160-76. Ordinances for protection of library.**—The governing body of any county or municipality establishing a public library shall have power to pass ordinances imposing penalties for any damage to or failure to return any book, plate, picture, engraving, map, magazine, pamphlet, newspaper, manuscript, film, recording, audio-visual equipment, or other specimen, work of literature, or object of art or of curiosity, or piece of equipment, belonging to such library. (1953, c. 721, 1963, c. 945.)

§ **160-77. Retention, removal, destruction, etc., of library items or equipment.**—(a) Any person who shall

(1) Willfully or intentionally fail to return to a public library any library item or equipment belonging to such public library within fifteen (15) days after the librarian has mailed or delivered in person notice in writing that the time for which such library item or equipment may be kept under library regulations has expired, or

(2) Willfully or intentionally remove from the premises of the public library any library item of equipment without charging it out in accordance with the regulations of the library, or

(3) Willfully or wantonly damage, deface, mutilate, or otherwise destroy any library item or equipment, whether on the library premises or on loan, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifty dollars ($50.00) or imprisonment for

not more than thirty (30) days; provided, that the notice required by this section shall bear upon its face a copy of this section.

(b) For the purposes of this section, "library item or equipment" shall be defined to include any book, plate, picture, engraving, map, magazine, pamphlet, newspaper, manuscript, film, recording, or other specimen, work of literature, or object of art or of historical significance or of curiosity owned by the library, or any audio-visual equipment or other equipment owned by the library. (1953, c. 721; 1963, c. 945.)

ARTICLE 9.

Local Improvements.

§ **160-78. Explanation of terms.**—In this article the term "municipality" means any city or town in the State of North Carolina now or hereafter incorporated.

"Frontage" when used in reference to a lot or parcel of land abutting directly on a local improvement, means that side or limit of the lot or parcel of land which abuts directly on the improvement.

"Governing body" includes the board of aldermen, board of commissioners, council, or other chief legislative body of a municipality.

"Local improvement" means any work undertaken under the provisions of this article, the cost of which is to be specially assessed in whole or in part, upon property abutting directly on the work.

"Sidewalk improvement" includes the grading, construction, reconstruction and altering of sidewalks in public streets or alleys, and may include curbing and gutters.

"Street improvement" includes the grading, regrading, paving, repaving, macadamizing, remacadamizing and bituminous surface treatment constructed on a soil stabilized base course with a minimum thickness of four inches, (such soil stabilizing agents to be top soil, sand clay, sand clay gravel, crushed stone, stone dust, Portland cement, tar, asphalt or any other stabilizing materials of similar character, or any combination thereof,) of public streets and alleys, and the construction, reconstruction, and altering of curbs, gutters and drains in public streets and alleys. (1915, c. 56, s. 1; C. S., s. 2703; 1945, c. 461.)

Editor's Note.—The 1945 amendment inserted in the paragraph explaining "street improvement" the provision as to bituminous surface treatment.

Ownership of Street Prerequisite to Assessment for Improvement.—The ownership by the city of a street is a prerequisite to the power of the city to levy an assessment for street improvements against abutting owners thereon. Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632 (1930).

Applied in In re Resolutions, 243 N. C. 494, 91 S. E. (2d) 171 (1956).

Cited in Atlantic, etc., R. Co. v. Ahoskie, 192 N. C. 258, 134 S. E. 653 (1926); Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264 (1934); Farmville v. Paylor, 208 N. C. 106, 179 S. E. 459 (1935); Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943); Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954); Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

§ **160-79. Application and effect.**—This article shall apply to all municipalities. It shall not, however, repeal any special or local law or affect any proceedings under any special or local law for the making of street, sidewalk or other improvements hereby authorized, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and to be a complete act, not subject to any limitation or restriction contained in any other public or private law or laws, except as herein otherwise provided. (1915, c. 56, s. 2; C. S., s. 2704.)

Cross References.—As to the effect of the act of 1917 on this article, see § 160-193. As to street and sidewalk improvement and repair, see also §§ 160-54 and 160-222 et seq. As to improvements generally, see § 160-206 et seq.

Laws Construed Separately.—The General Statutes authorizing cities and towns to issue bonds and assess abutting lands for improving and paving streets, and not requiring that the questions be submitted to the voters, are additional and independent of special or local laws, and where the latter required the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private act, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under the general law, upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

In case a special or local law is invalid, this article may be followed in making local improvements. But its provisions must be complied with. Cottrell v. Lenoir, 173 N. C. 138, 91 S. E. 827 (1917).

Special Act Prevails.—When a special or local law is passed that is inconsistent with this article the special or local law will prevail, although there is no reference to this section, or repealing clause. Bramham v. Durham, 171 N. C. 196, 88 S. E. 347 (1916).

Local Act Not Repealed.—This article did not affect chapter 397 of Private Laws of 1901, relating to the city of Goldsboro, and the power given to the city by that act for paving streets remained unimpaired. Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954). See note to § 160-104.

Cited in Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934).

§ 160-80. Publication of resolution or notice.—Every resolution passed pursuant to this article shall be passed in the manner prescribed by other laws for the passage of resolutions. Whenever a resolution or notice is required by this article to be published, it shall be published at least once in a newspaper published in the municipality concerned, or, if there be no such newspaper, such resolution or notice shall be posted in three public places in the municipality for at least five days. (1915, c. 56, s. 3; C. S., s. 2705.)

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-81. When petition required.—Every municipality shall have power, by resolution of its governing body, upon petition made as provided in § 160-82, to cause local improvements to be made and to defray the expense of such improvements by local assessment, by general taxation, and by borrowing, as herein provided. No petition shall be necessary, however, for the ordering or making of private water, sewer and gas connections as hereinafter provided. Nor shall a petition be necessary for the making of sidewalk improvements in those municipalities in which by other law or laws sidewalk improvements are authorized to be made without petition. (1915, c. 56, s. 4; C. S., s. 2706.)

Cross Reference.—As to resolution without petition and hearing to determine advisability of improvements, see § 160-207.

Absence of Petition Cured by Legislation.—When improvements are made under an assessment, and there has been no petition as required by this section the assessments are invalid. However this defect may be cured by a validating act of the legislature although the act is retrospective. Holton v. Mockville, 189 N. C. 144, 126 S. E. 326 (1925); Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926).

Validation of Proceedings for Improvements Made without Petition.—The General Assembly having the power to confer upon the authorities of a municipal corporation power to improve its streets and sidewalks and to assess the owners of abutting property with a part of the cost of such improvements without a petition, as indicated by this section, has the power to validate proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 261, 85 S. E. (2d) 125 (1954).

§ 160-82. What petition shall contain.—The petition for a local improvement shall be signed by at least a majority in number of the owners, who must represent at least a majority of all the lineal feet of frontage of the lands (a majority in interest of owners of undivided interests in any piece of property to be deemed and treated as one person for the purpose of the petition) abutting upon the street or streets or part of a street or streets proposed to be improved.

The petition shall cite this article and shall designate by a general description the local improvement to be undertaken and the street or streets or part thereof wherein the work is to be effected. The petition shall be lodged with the clerk of the municipality, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1915, c. 56, s. 5; C. S., s. 2707; 1955, c. 675; 1963, c. 1000, s. 1.)

Local Modification.—City of Reidsville: 1957, c. 793.

Editor's Note.—The 1955 amendment inserted two paragraphs relating to petitions by the State or its agencies. The 1963 amendment deleted the paragraphs inserted by the 1955 amendment.

Applicable When City Owns Part of Abutting Land.—A town is subject to assessment on its abutting property, and the rule of a majority of lineal feet and number of owners will apply just the same when a city owns a part of the abutting land as any other time. And if the city fails to sign when its signature is necessary to have a majority of lineal feet, the assessment is a nullity. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Actual Contact with Abutting Property Not Necessary.—An objection by the owner of land abutting on the street to an assessment by the front foot rule for special benefit, upon the ground that his property does not come in actual contact with the part of the street for which the city has paid as a general benefit, is untenable under this section. Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262 (1921).

Petition Necessary.—Under this section an assessment for widening a street under contract with the Highway Commission without petition of a majority of the owners is invalid. Sechriest v. Thomasville, 202 N. C. 108, 162 S. E. 212 (1932).

Sufficiency of Petition.—In Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923), it was held that where it appears upon the face of the petition, as a matter of law, that the signers of the petition do not represent a majority of the lineal feet of the total frontage on the street, proposed to be improved, the determination of the governing body as to the sufficiency of the petition is not final or conclusive. Insofar as the sufficiency of the petition, authorized to be filed under this section, involves only questions of fact, the determination of the governing body, in the absence of fraud, and when acting in good faith, is final and conclusive. Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926).

Sufficiency of Complaint Alleging Invalidity of Petition.—In an action to have an assessment levied against plaintiff's property declared invalid, a complaint alleging that only one of the signatures of abutting property owners to the petition for improvements was valid, without alleging that the assessment was based on the petition, what other signatures appeared on the petition or facts supporting the conclusion that the other signatures were invalid, was insufficient to state a cause of action, and demurrer to complaint was properly sustained. Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

Approval of Petition Final.—Where the municipal authorities have approved the petition of owners of land abutting upon a street proposed to be improved in accordance with the provisions of statute, their approval and order for the improvements to be made is final, except where it appears from the face of the petition, as a matter of law, that the signers do not represent a majority of the owners or of the lineal feet required by statute. Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

Where levies are made without a petition the assessments are invalid but not void, and the legislature has the power to validate the assessments by subsequent legislative act, the legislature having the power to authorize the assessments in the first instance. Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934).

Procedure Must Fulfill Essential Requirements.—While a slight informality of procedure under this section or a failure to observe a provision which is merely directory will not generally affect the validity of an assessment, it is nevertheless true that any substantial and material departure from the essential requirements of the law under which the improvement is made will render an assessment therefor invalid. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Lineal Feet of Frontage—Signing by Railroad Company.—The right of way of a railroad company abutting on a street proposed to be improved by a city is properly included in the lineal feet in the petition for improvement under the provisions of this section. Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

Abutting Owners.—See note under § 160-85.

Improvement of Only One Side of Street.—Under this section, an assessment levied for street improvements on abutting property owners is not void on the ground that the assessment was for improving only one side of a street. Waxhaw v. S. A. L. Ry. Co., 195 N. C. 550, 142 S. E. 761 (1928).

Signatures as Evidence of Agency.—Where the wife owned the locus in quo, and the petition for public improvements was signed by the husband and by the wife, the signature of the wife as the owner of the property along with the signature of the husband is sufficient evidence to be submitted to the jury on the issue of whether the wife constituted her husband her agent to subsequently act for her in the premises, rendering the listing of the property in his name on the assessment roll, and the special assessment book, and the giving of the statutory notices to him, sufficient, thus rendering the lien against the property valid and enforceable as against her and as against her subsequent grantee. Wadesboro v. Coxe, 218 N. C. 729, 12 S. E. (2d) 223 (1940).

Resolution as Evidence.—In an action by a municipality to enforce a lien for public improvements, objection that plaintiff failed to introduce in evidence the petition for improvements signed by the owners of a majority of the lineal feet frontage abutting the improvements was held untenable where the original resolution of the city introduced in evidence recited a proper petition and that it was duly certified by the clerk, as required by this section, since if such finding was erroneous, the remedy for correction was by appeal. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

Applied in High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

Cited in Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954).

§ **160-82.1. State participation in local improvements.**—(a) Intent and Scope of Section.—It is the intent of this section to encourage, and to provide for, State participation in the financing of street, water, and sewerage improvements made by cities and counties under special assessment programs in order that benefited State property will bear its fair share of the costs, and that street, water, and sewerage services may be extended in an orderly manner and with equitable sharing of costs by the different owners of benefited property. The procedure for State participation herein provided shall apply to local improvements initiated under the authority of this article and to those initiated under any general law or special act.

(b) Procedure.—

(1) The State may, when in the opinion of the Governor and the Council of State any State-owned property would be benefited, either immediately or in the foreseeable future, by any street, water, or sewerage improvement, petition any city or county government to make such improvement and may pay its ratable part of the cost thereof from the Contingency and Emergency Fund of the State of North Carolina, or from any funds which may have been appropriated for that purpose, or from any appropriation to the Department of Administration which may not be required for other purposes.

(2) If any agency of the State of North Carolina shall own or occupy any State property, the governing body of such agency may, when in its opinion the making of any street, water, or sewerage improvement would benefit either immediately or in the foreseeable future, the property owned or occupied by such agency, and with the consent of the Governor and the Council of State, petition any city or county to make such improvement and may pay its ratable cost of such improvement out of any funds appropriated for that purpose or any funds in its hands which are not required for other purposes.

(3) When any city or county proposes to make any street, water, or sewerage improvement and to assess all or part of the cost thereof against locally benefited property, the governing board of any such city or county may request the Governor and the Council of State to authorize the signing of a petition for the improvement and the payment by the State of its ratable part of the cost of the proposed improvement for any property owned by the State or its agencies which will be benefited by the improvement, either immediately or in the foreseeable future. Provided, the Governor and the Council of State may authorize the Director of Administration to approve or disapprove requests from cities and counties and to make ratable payments as herein provided. Provided further, any city or county may appeal to the Governor and the Council of State upon the disapproval of any request by the Director of Administration. When payment is authorized, such payment may be made from the Contingency and Emergency Fund of the State of North Carolina, from any funds which may have been appropriated for that purpose, or from any

appropriation to the Department of Administration which may not be required for other purposes. All such requests by city and county governing boards shall be filed with the Director of Administration for transmission to the Governor and the Council of State, and shall include a copy of the petition for the proposed improvement in all cases in which the making of the improvement requires a petition from the owners of benefited property. (1963, c. 1000, s. 2.)

§ **160-83. What resolution shall contain.**—(a) Designate Improvements.—The preliminary resolution determining to make a local improvement shall, after its passage, be published. Such resolution shall designate by a general description the improvement to be made, and the street or streets or part or parts thereof whereon the work is to be effected, and the proportion of the cost thereof to be assessed upon abutting property and the terms and manner of the payment.

(b) Sidewalk Improvements.—If such resolution shall provide for a sidewalk improvement, it may, in those municipalities in which the owners of the abutting property are required to make payment of the entire cost thereof, without petition direct that the owners of the property abutting on the improvement shall make such sidewalk improvement, and that unless the same shall be made by such owners on or before a day specified in the resolution, the governing body may cause such sidewalk improvement to be made.

(c) Affecting Railroads.—If the resolution shall provide for a street improvement, it shall direct that any street railway company or other railroad company having tracks on the street or streets or part thereof to be improved shall make such street improvement, with such material and of such a character as may be approved by the governing body, in that part of such street or streets or part thereof which the governing body may prescribe, not to exceed, however, the space between the tracks, the rails of the tracks, and eighteen inches in width outside of the tracks of such company, and that unless such improvement shall be made on or before a day specified in such resolution, the governing body will cause such improvement to be made: Provided, however, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provided, such franchise or contract shall not be affected by this section, except in so far as may be consistent with the provisions of such franchise or contract.

(d) Water, Gas, and Sewer Connections.—If the resolution shall provide for a street or sidewalk improvement, it may, but need not, direct that the owners of all property abutting on the improvement shall connect their several premises with water mains, gas and sewer pipes located in the street adjacent to their several premises in the manner prescribed in such resolution, and that unless such owners shall cause connection to be made on or before a day specified in such resolution, the governing body will cause the same to be made. (1915, c. 56, s. 6; C. S., s. 2708.)

Construction of Former Franchise to Railroad.—A city ordinance granting a franchise to a street railway to operate upon its streets, requiring that it do certain grading and other things enumerated at its own expense, and further stating in direct and continuous connection with this subject that "nothing herein contained shall be construed to require said company to pave its roads," is held to apply only to conditions then existing, and will not be construed to exempt the corporation from paying its part of future assessments that may be levied upon abutting owners for the paving and improvements of the streets. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Extent of Railroad's Liability.—This section specifying that the burden imposed upon a street railway company in assessing its property for street improvements shall not exceed "the space between the tracks, the rails of the track, and eighteen inches in width outside of the tracks," is not violated if including the length of the crossties the statutory limitation of the width had not been exceeded. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Railroad Property.—A town, to widen its streets, agreed with a railroad company to condemn land and give it to the company if it would remove its tracks thereto at its own expense. After this arrangement had been carried out, the town assessed the lands of the railroad company for street paving, under a resolution which contained no requirement that the company should improve the land occupied by its tracks as specified by subsection (c) of this section. It was held that the railroad was not liable for the assessment as the property being a part of the street was not "adjoining" within the provisions of this article. Lenoir v. Carolina, etc., Ry. Co., 194 N. C. 710, 140 S. E. 618 (1927).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

§ 160-84. Character of work and material.—The governing body shall have power to determine character and type of construction and of material to be used in making a local improvement, and whether the work, where not done by owners of abutting property or by a street or other railroad company, shall be done by the forces of the municipality or by contract: Provided, that for the purposes of securing uniformity in the work the governing body shall always have the power to have all street paving done by the forces of the municipality or by contract under the provisions of this article. (1915, c. 56, s. 7; C. S., s. 2709.)

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-85. Assessments levied.—(a) One-Half on Abutting Property.—One-half of the total cost of a street or sidewalk improvement made by a municipality, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways, shall be specially assessed upon the lots and parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage, unless the petition for such street or sidewalk improvement shall request that a larger proportion of such cost, specified in the petition, be so assessed, in which case such larger proportion shall be so assessed, and the remainder of such cost shall be borne by the municipality at large; but no assessment for streets and sidewalks shall be made against abutting property on any such street or sidewalk until said street or sidewalk has been definitely laid out and the boundaries of the same definitely fixed.

(b) Upon Railroads.—The cost of that part of a street improvement required to be borne by a railroad or street railway company, and made by the municipality after default by a railroad or street railway company in making the same as hereinbefore provided, shall be assessed against such company, and shall be collected in the same manner as assessments are collected from abutting property owners, and such assessment shall be a lien on all of the franchises and property of such railroad or street railway company.

(c) For Sidewalks.—The entire cost of a sidewalk improvement required to be made by owners of property abutting thereon, and made by the municipality after default by such property owners in making the same, as hereinbefore provided, shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made and directly on the improvement, according to their respective frontages thereon, by an equal rate per foot of such frontage.

(d) Water, Gas and Sewer Connections.—The entire cost of each water, gas and sewer connection, required to be made by the owner of the property for or in connection with which such connection was made, but made by the municipality after default by such property owner in making the same, as hereinbefore provided, shall be specially assessed against the particular lot or parcel of land for or in connection with which it was made. No lands in the municipality shall be exempt from local assessment. (1915, c. 56, s. 8; 1919, c. 86; C. S., s. 2710.)

I. General Consideration.
II. Railroads.
III. Drains—Water, etc., Connections.

I. GENERAL CONSIDERATION.

Local Modification.—City of Concord, as to subsection (a): 1957, c. 410.

The clear interpretation of this section means what its language says—that one-half of the total cost of the street improvements shall be assessed upon the parcel of land abutting directly on the improvement, according to the extent of the respective frontage thereon. Carpenter v. Maiden, 204 N. C. 114, 167 S. E. 490 (1933).

Power to Impose Assessments within Right of Taxation.—The power to impose assessments upon owners whose lands abut upon the streets of a city to be improved, comes within the sovereign right of taxation, and no license, permit, or franchise from the legislature or a municipal board will be construed to establish an exemption from the proper exercise of this power, or in derogation of it, unless these bodies are acting clearly within their authority, and the grant itself is in terms so clear and explicit as to be free from substantial doubt. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

The words "abutting on the improvement" means abutting on the street that is improved, and this does not require that the pavement shall extend the entire width of the street when this would be an unnecessary cost, and would greatly enhance the burden of which the plaintiff in this case complains Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262 (1921).

Abutting property cannot exist in the street itself, but, in the nature of things, must be property outside of the street, touching or bordering upon the street or improvement. So a railroad is not an abutting owner by virtue of the fact that its tracks are laid in a public street. Town of Lenoir v. Carolina & N. W. Ry. Co., 194 N. C. 710, 140 S. E. 618 (1927).

Intervening Land between Property and Improvement.—The term "abutting property" means that between which and the improvement there is no intervening land. Anderson v. Albemarle, 182 N. C. 434, 109 S. E. 262 (1921). See also In re Resolutions, 243 N. C. 494, 91 S. E. (2d) 171 (1956).

Where the municipality owns the fee in land located between the street and the property assessed, the assessment is void. Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328 (1939).

School Property Subject to Assessment.—Lands owned by "The School Committee of Raleigh Township, Wake County," and used exclusively for public school purposes, are liable for assessment for street improvements made by the city of Raleigh under this article. Raleigh v. Raleigh City Administrative Unit, 233 N. C. 316, 26 S. E. (2d) 591 (1943).

Also Public Parks, etc.—In the absence of constitutional or statutory provision to the contrary, the public property of a municipality, such as parks, etc., is subject to assessment for local improvements of its streets, and when there is no provision exempting them, a public park of a city is included within the intent and meaning of Laws 1915, ch. 56, providing that lands abutting on a street to be paved or improved should be assessed for such improvements to the extent of the respective frontage of the lots thereon, in a certain proportionate part of the cost, by the "front foot" rule. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Interference by Courts.—Where an act allows assessments to be made by a city on property abutting on a street for pavements or improvements thereon, the legislative declaration on the subject is conclusive as to the necessity and benefit of the proposed improvements, and in applying the principle and estimating the amount as against the owners, individual or corporate, the court may interfere only in case of palpable and gross abuse. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

Applied in Raleigh Cemetery Ass'n v. Raleigh, 235 N. C. 509, 70 S. E. (2d) 506 (1952).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

II. RAILROADS.

Railroads Assessed Same as Private Owners.—The property of railroad companies abutting upon the streets of a city is liable to assessments for the paving and improvements thereon to the same extent as that of private owners, in proper instances, and where proper legislative authority is therefor shown. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

When Exception as to Street Intersections Inapplicable.—Where railroad property in a city lies along an unimproved street, but abuts upon an improved street that runs through the unimproved one, the owner is ordinarily liable to an assessment of one-half of the costs of the improvement on the abutting and improved street, and the exception in the statute as to street intersections is inapplicable. Mount Olive v. Atlantic, etc., R. Co., 188 N. C. 332, 124 S. E. 559 (1924).

Street Railroad Treated as Abutting Owner.—The property and franchise of street railways laid along a given street or designated locality within the effects and benefits of the proposed improvements, may lawfully be considered abutting owners. Durham v. Durham Pub. Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

A city ordinance granting a franchise to a street railway to operate upon its streets, requiring that it do certain grading and other things enumerated at its own expense, and further stating in direct and continuous connection with this subject that "nothing herein contained shall be construed to require said company to pave its road," is held to apply only to conditions then existing, and will not be construed to exempt the corporation from paying its part of future assessments that may be levied upon abutting owners for the paving and improvements of the street. Durham v. Durham Pub. Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Same—How Estimate Made.—In making an assessment on the property of a street railway company as an abutting owner on the street improved, not only the value of its tangible property, such as tracks, etc., should be considered, but, also, the estimated value of the company's franchise under which it is operating, and which by fair apportionment should be included in the estimate. Durham v. Durham Public

Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Section Additional to Local Laws.—The general statutes authorizing cities and towns to issue bonds and assess abutting lands for improving and paving streets, and not requiring that the questions be submitted to the voters, are additional and independent of special or local laws (§ 160-79), and where the latter require the question to be first submitted to the voters for their approval, and these requirements have been fully met, under the private acts, the transactions thereunder complete and their validity unquestioned, a railroad company may not resist an assessment made under this section upon the ground that the provisions of the private acts, requiring the approval of the voters, control the question of the validity of the assessments. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

Where a city or town has proceeded under private acts to issue bonds and assess the lands of abutting owners for street paving and improvements and for insufficiency of funds thus expended find it necessary to assess the lands of a railroad company abutting on streets so improved under this section, a later act ratifying the private acts, evidently for the purpose of curing apprehended defects and to make the bonds a more safe and desirable investment, cannot affect the validity of the proceedings under the general laws. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 745 (1922).

III. DRAINS—WATER, ETC., CONNECTIONS.

Assessment for Drains.—For constructing drains it is not necessary that the assessments be the same, for cost will be different because of difference in location and slope of the several lots. Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926).

Where Charges for Water and Gas Connections Not Preferred Claim.—Charges for water and gas connections, incurred during the lifetime of a life tenant and unpaid at his death, do not constitute a preferred claim against his estate as taxes assessed on the estate prior to his death, since in no event would such charges stand upon a higher plane than assessments for permanent improvements. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24 (1936).

§ 160-86. Amount of assessment ascertained.—Upon the completion of any local improvement the governing body shall compute and ascertain the total cost thereof. In the total cost shall be included the interest paid or to be paid on notes or certificates of indebtedness issued by the municipality to pay the expense of such improvement pursuant to the provisions of this article and incident to the improvement and assessment therefor. The governing body must thereupon make an assessment of such total cost pursuant to the provisions of the preceding section, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed. (1915, c. 56, s. 9; C. S., s. 2711.)

In General.—Where a city or town has regularly and sufficiently proceeded to assess the lands of abutting property owners under the provisions of this statute, and have published the notice thereof as § 160-87 requires, and such owners have been afforded ample opportunity to be heard by the commissioners of the municipality (§ 160-88), their failure to appear and resist the assessment thus laid on their property under the proceedings prescribed will bar their right to impeach the ordinance. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593 (1925).

Sufficiency of Description of Land.—The assessments made upon the lands of an owner adjoining a street improved by the authorities of a city or town, will not be declared invalid on the grounds of the insufficiency of description in the assessment roll at the suit of such property owners, when in substantial compliance with this and the next section. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593 (1925).

Map Sufficient Description.—A map made by the city engineer duly approved by the city commissioners is sufficient compliance with the requirements of this statute. Holton v. Mockville, 189 N. C. 144, 126 S. E. 326 (1925).

Applied in High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ 160-87. Assessment roll filed; notice of hearing.—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. Any number of assessment rolls may be included in one notice. (1915, c. 56, s. 9; C. S., s. 2712.)

Notice of Filing.—Where assessments have been imposed under this article it is presumed that the assessment roll was filed in the office of the clerk of the municipality for inspection, and this section gives notice that the roll was there and the amount assessed. Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934).

Section Does Not Confer Power to Condemn Property.—The governing body of a town has no jurisdiction in proceeding under this section and § 160-88, to condemn land for street purposes, under the power of eminent domain. Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264 (1934).

Notice of First Hearing.—Where notice of hearing on the confirmation of an assessment roll was not published, but on the date set for the hearing the municipal board met and adopted the required resolution in amplified form, fixed the time and place for hearing of objections, and notice of the hearing on the second date set was duly published, which hearing was duly had on that date, necessary corrections made, and the assessment roll as corrected duly approved and confirmed, it was held that the fact that notice of hearing on the first date set was not published, as required by this and the following section, was rendered immaterial. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ **160-88. Hearing and confirmation; assessment lien.**—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and may make proof in relation thereto. The governing body may thereupon correct such assessment roll, and either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes. (1915, c. 56, s. 9; C. S., s. 2713.)

Assessments Constitute Liens on Property.—Assessments made upon the property of the owner for street and sidewalk improvements by a town, and in all respects under the authority conferred on the municipality by statute, extending in partial payments over a designated period of time, are to be regarded in the nature of a statutory mortgage when due and payable, and constitute liens on the property within the warranty clause against encumbrances contained in a deed, and are recoverable in the grantee's action against the grantor to the extent he has been required to pay them. Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927).

Within Meaning of Warranty against Encumbrances.—The lien for street assessments is an encumbrance within the meaning of the warranty clause against encumbrances contained in a deed. Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (1934), citing Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927).

Lien Amounts to Statutory Mortgage.—The lien given under this section, when properly established, amounts to a statutory mortgage. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

And Is Based on Theory of Special Benefit to Property.—The lien against property for street improvements is a lien in rem against the land itself, but it is not strictly a tax lien and is based upon the theory of special benefit to the property itself. Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

When Lien Attaches.—By provisions of this section the lien for street assessments does not attach to land until confirmation of the assessments, and where such assessments are not confirmed by the governing body of the town until after the execution of a deed to the property, the subsequently attaching lien for the assessments does not violate the warranty and covenant in the deed, in the usual language, against encumbrances. Oliver v. Hecht, 207 N. C. 481, 177 S. E. 399 (1934).

Sufficiency of Compliance with Section.—Where the property owner signs the petition and has notice that improvements are to be made, and notice that the assessment roll giving the amount of the assessment against his property, has been filed in the office of the city clerk, as required by

§ 160-87, and accepts the benefits and pays installments of the assessments without objection, as provided by § 160-89, he ratifies same and this section is sufficiently complied with. Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934).

Priority of Lien.—The amount of an assessment on the owner of land lying along a street for street improvements, is, by this statute creating a lien, superior to all other liens and encumbrances and continues, until paid, against the title of successive owners thereof. Merchants Bank, etc., Co. v. Watson, 187 N. C. 107, 121 S. E. 181 (1924).

The provision of this section in regard to liens does not exclusively refer to subsequent liens; and the reference to the date of confirmation is only to fix the time when the lien is conclusively established, and when so established it takes precedence over all liens then existent or otherwise. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922).

In an action to foreclose street assessment liens it was said that if it be thought that effect should be given to the provisions relative to ad valorem taxes in § 105-340, that the lien for taxes levied shall attach to all the real estate of the taxpayer and shall continue until such taxes shall be paid, it may be noted that this section, relating to local assessments provides only that the assessment when confirmed shall be a lien on the real property against which it is assessed, superior to all other liens. Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

But in Saluda v. Polk County, 207 N. C. 180, 176 S. E 298 (1934), it was held that a lien for street assessments under this section, while superior to the liens of mortgages or deeds of trust, is subject to the lien of the city and county for taxes for general revenue.

Same—Enforcement against Estate of Decedent.—An assessment made upon adjoining land for a street improvement by a town is a charge upon the land constituting a lien superior to all others and not enforceable against the personalty or other lands of the owner, and when the owner of land has been thus assessed, payable in installments, and he subsequently dies, it is not a debt of the deceased payable by his personal representative, but a charge against the land itself. The provisions of § 28-105, as to the order of payment of debts of the deceased, has no application. Carawan v. Barnett, 197 N. C. 511, 149 S. E. 740 (1929). See Statesville v. Jenkins, 199 N. C. 159, 154 S. E. 15 (1930); High Point v. Brown, 206 N. C. 664, 175 S. E. 169 (1934); Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (1934).

Statute of Limitations.—The assessment against abutting lands for street improvements is made a lien on the land superior to all other liens and encumbrances under this section, and the ten-year statute of limitation is applicable thereto and not the three-year statute. High Point v. Clinard, 204 N. C. 149, 167 S. E. 690 (1933).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845 (1938); Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

§ 160-89. Appeal to the superior court.—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal, but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1915, c. 56, s. 9; C. S., s. 2714.)

Jurisdiction of Court Is Derivative.—The jurisdiction of the superior court upon appeal from a levy of assessments for street improvements by the governing body of a town as provided by this section, is entirely derivative, and where a town has no jurisdiction to condemn land the superior court on appeal likewise has no jurisdiction to do so. Atlantic Coast Line R. Co. v. Ahoskie, 207 N. C. 154, 176 S. E. 264 (1934).

Right of Appeal Makes Section Constitutional.—The right of appeal to the courts being provided in case of dissatisfaction by an owner of land abutting on a street assessed by the governing body of a municipality for street improvement, the objection that the owner's property is taken for a public use in contravention of the due process clause of the Constitution is untenable. Lake v. Wadesboro, 186 N. C. 683, 121 S. E. 12 (1923).

And Is Only Remedy of Abutting Owner.—In an action to enforce a lien for public improvements, a defendant who had notice and ample opportunity to be heard and to appeal from the order confirming the assessment roll, cannot impeach the validity of the ordinance or of the assessment for any alleged irregularities which are not jurisdictional. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

While a petition is a prerequisite it is not jurisdictional, and if the finding by the municipal board is erroneous it should be corrected by appeal under this section. Asheboro v. Miller, 220 N. C. 298, 17 S. E. (2d) 105 (1941).

Writ of Certiorari.—An abutting property owner who failed to appeal from a final order of the board of aldermen affirming the assessment roll was not entitled to a writ of certiorari where application for the writ was filed more than eight months after his time for appeal had expired. Sanford v. Southern Oil Co., 244 N. C. 388, 93 S. E. (2d) 560 (1956).

Injunctive Relief.—The remedy of abutting owners assessed for street improvements is given by this section providing the right of appeal and when no appeal has been taken and the work has been completed, injunctive relief against the collection of the assessments by the city will not lie. Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

The owner of land abutting on a street the municipality proposes to improve has his remedy in objecting to the local assessment on his property because of the insufficiency of the petition, and he may not enjoin the issuance of bonds for this necessary expense on that ground when he has failed to pursue his statutory remedy. Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41 (1923).

Estoppel to Assert Errors in Assessments.—Where the property owner failed to object and avail himself of the specific remedy for review and correction of the assessment, but made payments on the assessment, he is estopped to show error in the assessment. Wake Forest v. Gulley, 213 N. C. 494, 196 S. E. 845 (1938).

Existence of Street May Be the Issue.—Under the provisions of this statute, it is necessary that there be an existing street in order for a valid assessment for improvements to be laid on the property of abutting owners, and this may be made an issue in an appeal under this section, and the adjoining owner may introduce his evidence to show to the contrary. Atlantic Coast Line R. Co. v. Ahoskie, 192 N. C. 258, 134 S. E. 653 (1926).

Cited in Greensboro v. Bishop, 197 N. C. 748, 150 S. E. 495 (1929); Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632 (1930); Crutchfield v. Thomasville, 205 N. C. 709, 172 S. E. 366 (1934); Wake Forest v. Holding, 206 N. C. 425, 174 S. E. 296 (1934); High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937); Broadway v. Asheboro, 250 N. C. 232, 108 S. E. (2d) 441 (1959).

§ **160-90. Power to adjust assessment.**—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the costs of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or assessment bonds issued by the municipality to pay the expenses of such improvement. The proceeding shall be in all respects as in case of local assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C. S., s. 2715.)

When Section Not Applicable.—Where in accordance with the provision of § 160-85, subsection (a), the board of aldermen grant a petition for street improvements requesting the assessment of a larger proportion of the cost of the improvements against the lots of land abutting directly thereon than is otherwise required by statute, after the confirmation of the assessment roll a subsequent board of aldermen is without power to grant a petition of the abutting landowners for a reduction of the assessment upon the ground alone that the amount of the assessments exceeded that which they had originally anticipated, and a suit by other taxpayers of the town to enjoin the granting of such petition is proper. This section and § 160-246, have no application. McClester v. China Grove, 196 N. C. 301, 145 S. E. 562 (1928).

An extension resolution providing a new series of installment payments does not invalidate the lien of a municipality for an assessment for public improvements where the sums of the new installments in the aggregate exceed the amount actually due at the time of the extension. Differences may be adjusted under this section. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Cited in Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926); Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929).

§ **160-91. Payment of assessment in cash or by installments.**—The property owner or railroad or street railway company hereinbefore mentioned shall have the option and privilege of paying for the improvements hereinbefore provided for in cash, or if they should so elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in the next succeeding section, they shall have the option and privilege of paying the assessments in not less than five nor more than ten equal annual installments as may have been determined by the governing body in the original resolution authorizing such improvement. Such installments shall bear interest at the rate of six per centum per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner or railroad or street railway company to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such property and franchises shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date. (1915, c. 56, s. 10; C. S., s. 2716.)

Cross Reference.—See note to § 160-92.

Right to Declare All Installments Due.—The provision of this section, that upon failure to pay any installment when due, all installments remaining unpaid should at once become due and payable, gives the municipality the optional right to declare all installments due and payable upon default, and in the absence of its declaration to invoke the acceleration provision the statute of limitations will not begin to run against unpaid installments not then due. Farmville v. Paylor, 208 N. C. 106, 179 S. E. 459 (1935). See Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

When It Is Mandatory upon City to Allow Installment Payment.—The provisions in this section were enacted for the benefit of the property owner, giving the owner a period of thirty days from the date of notice is given as required by the following section, in which to pay the assessment in cash, without interest; or, if he should so elect and give notice in writing to the municipality within said period of thirty days, that he desires to pay his assessment in installments, then it becomes mandatory upon the city to permit such property owner to pay his assessment in installments. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

The option passes to the municipality to proceed to foreclose and collect the entire assessment or to collect the assessment in installments, as provided in the original resolution authorizing the improvements where the property owner remains silent and neither pays in cash within the thirty-day period nor signifies in writing his election to pay in installments. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Cited in Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927); Statesville v. Jenkins, 199 N. C. 159, 154 S. E. 15 (1930); High Point v. Brown, 206 N. C. 664, 175 S. E. 169 (1934); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934); Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

§ **160-92. Payment of assessment enforced.**—After the expiration of twenty days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent per annum from the date of the computation and ascertainment by the governing body of the total cost of the local improvement after its completion: Provided, that this shall not apply to improvements made under an ordinance prior to February 26, 1923. The assessment shall be due and payable on the date on which taxes are payable. Provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose. (1915, c. 56, s. 11; C. S., s. 2717; 1923, c. 87; 1929, c. 331, s. 1.)

Cross Reference.—See note to § 160-91.

Editor's Note.—By the 1923 amendment the date when interest begins to run was changed from the time of the "confirmation of the assessment roll" to "after the completion of the local improvement." And the 1929 amendment added the last sentence to this section.

Lien Enforced by Decree of Sale.—The lien created by this article may be enforced by decree of sale. Kinston v. Atlantic, etc., R. Co., 183 N. C. 14, 110 S. E. 645 (1922); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

Effect of Option to Pay in Installments.—The provisions of this section giving the property owner thirty days in which to pay assessments for local improvements, in cash without interest, or the election to pay the same in installments, are for the benefit of the property owner and, when exercised, become mandatory upon the municipality; but, when the property owner remains silent and neither pays in cash nor elects to pay in installments, the option passes to the municipality to foreclosure or to collect in installments. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Judgments for Installments.—Where the owner of land abutting on the street has refused to pay the assessments lawfully made on him for street improvements, a judgment allowing him to pay by installments may be entered. Durham v. Durham Public Service Co., 182 N. C. 333, 109 S. E. 40 (1921).

Interest Rate Is Prescribed.—The interest rate on street assessments is fixed by statute, and the courts are without authority at law or in equity to prescribe a lesser interest rate. Zebulon v. Dawson, 216 N. C. 520, 5 S. E. (2d) 535 (1939).

Cited in Coble v. Dick, 194 N. C. 732, 140 S. E. 745 (1927); Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

§ 160-93. Sale or foreclosure for unpaid assessments barred in ten years; no penalties.—No statute of limitation, whether fixed by law especially referred to in this chapter or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, whether for paving or other benefits, and whether such assessment is made under this chapter or under other general or specific acts, save from and after ten years from default in the payment thereof, or if payable in installments, ten years from the default in the payment of any installments. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff. This section shall apply to all special assessments heretofore or hereafter levied, but shall not apply to any special assessment for the collection of which an action or proceeding has been instituted prior to March 19, 1929. (1929, c. 331, s. 1.)

Local Modification.—Durham: 1935, c. 224; Mecklenburg, city of Charlotte: 1943, c. 181; city of Greensboro: 1953, c. 988; Sampson, Town of Clinton: 1939, c. 148.

Editor's Note.—For article on collectibility of special assessments more than ten years delinquent, see 22 N. C. Law Rev. 123.

Limitation of Actions.—In a suit under § 105-414 to foreclose a statutory lien on abutting property, given a city for street improvements, all installments of the amounts assessed therefor which are ten years overdue when action is brought are barred by this section, and no part of the proceeds of sale can be applied to the payment of such installments. Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

In this section the municipalities are expressly named in the statute of limitations. Therefore, an action to enforce the lien for public improvements, even though instituted under § 105-414, is barred after ten years from default in the payment of the assessments, or, if the assessments are payable in installments, each installment is barred after ten years from default in payment of the same unless the time of payment has been extended as provided by law. Charlotte v. Kavanaugh, 221 N. C. 259, 20 S. E. (2d) 97 (1942).

Section Applies to Action to Foreclose Drainage Assessment.—This section applies to an action brought by a drainage district for foreclosure of delinquent drainage assessments, and authorizes "one reasonable attorney's fee for the plaintiff" to be included and taxed in the costs in such an action. Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

When Allowance of Attorney's Fee to Be Made.—It would seem that the legislature intended that the allowance of an attorney's fee under this section should be made at the conclusion of the proceeding and not in the course of it. Robeson County Drainage Dist. v. Bullard, 229 N. C. 633, 50 S. E. (2d) 742 (1948).

Cited in Raleigh v. Raleigh City Administrative Unit, 223 N. C. 316, 26 S. E. (2d) 591 (1943).

§ 160-94. Extension of time for payment of special assessments.—At any time or times prior to February the first, one thousand nine hundred and forty-five, the governing body of any city or town may adopt a resolution granting an extension of the time for the payment of any installment or installments of any special assessment, including accrued interest thereon and costs accrued in any action to foreclose under the lien thereon, by arranging such installment or installments, interest and costs into a new series of ten equal installments so that one of said installments shall fall due on the first Monday in October after the expiration of one year after adoption of the aforesaid resolution and one of said installments on the first Monday in October of each year thereafter. Accrued interest on any installment or installments of any special assessment extended under the provisions of this section shall be computed to the first Monday in October following the adoption of the aforesaid resolution: Provided, however, that such extension shall not prevent the payment of any assessment or interest at any time: Provided further, no such extension shall in any way discriminate in favor of or against any property assessed by virtue of said assessment roll: Provided further, that any installment or installments, together with accrued interest and costs extended in accordance with the provisions of this section shall bear interest at the rate of six per centum per annum from the first Monday in October following the adoption of the aforesaid resolution. (1931, c. 249; 1933, cc. 252, 410; 1935, c. 126; 1937, c. 172; 1939, c. 198; 1941, c. 160; 1943, c. 4.)

Local Modification.—Orange, Town of Carrboro: 1937, c. 195; Wake: 1963, c. 755.

Editor's Note.—The 1937 amendment changed the year in the first sentence to 1938, the 1939 amendment changed it to 1940, and the 1941 amendment changed it to 1942. The 1943 amendment changed the date therein from "July the first, one thousand nine hundred and forty-two" to "February the first, one thousand nine hundred and forty-five."

For comment on the 1941 amendment, see 19 N. C. Law Rev. 526.

For article on collectibility of special assessments more than ten years delinquent, see 22 N. C. Law Rev. 123.

Extension Contrary to Section Is Not Void.—A resolution of the governing body of a municipality, providing for an extension of the payments of an assessment for local improvement in installments, which is contrary to this section, is defective but not void, and may be amended by a subsequent resolution to conform to the statutory requirements. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

Where New Installments Exceed Amount Actually Due.—The lien of a municipality, for an assessment for public improvements, is not invalidated by an extension resolution providing a new series of installment payments, where the sums of the new installments in the aggregate exceed the amount actually due at the time of the extension. Differences may be adjusted under G. S. 160-90. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

When Statute of Limitations Begins to Run.—Where a new series of installment payments of an assessment for local improvements is provided, under this section, the ten-year statute of limitations begins to run on each new installment as it becomes due. Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

§ **160-95. Assessments in case of tenant for life or years.**—Whenever any real estate is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property by any city, town, county, township, municipal district, or the State, to cover the cost of permanent improvements ordered put thereon by the law or the ordinances of such city or town, township, or municipal district, such as paving streets and sidewalks, laying sewer and water lines, draining lowlands, and permanent improvements of a like character, which constitute a lien upon such property, the amount so assessed for such purposes shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate. (1911, c. 7, s. 1; C. S., s. 2718.)

Assessments Not Preference against Estate of Deceased Life Tenant.—Since street and sidewalk assessments constitute a lien against the property not collectible out of other properties belonging to the owner, and since by this section a life tenant is not liable for the whole assessment, being entitled to have it proportioned under § 160-97, upon the death of a life tenant such assessments made prior to his death do not constitute a preference against his estate payable in the third class of priority as a tax assessed on the estate prior to his death. Rigsbee v. Brogden, 209 N. C. 510, 184 S. E. 24 (1936). See § 28-105 and note.

§ 160-96. Interests of parties ascertained.—The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13. (1911, c. 7, s. 2; C. S., s. 2719.)

§ 160-97. Lien of party making payment.—If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the city, town, township, municipal district, county, or the State, to a lien on such property for the same. (1911, c. 7, s. 3; C. S., s. 2720.)

§ 160-98. Lien in favor of co-tenant or joint owner paying special assessments.—Any one of several tenants in common, or joint tenants, or co-partners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his co-tenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office. (1935, c. 174.)

§ 160-99. Money borrowed to be paid out of assessment.—At any time before the cost of any local improvement shall be computed and ascertained as provided in this article, the municipality may from time to time by resolution authorize the treasurer to borrow money to the extent required to pay the cost of any such improvement or to repay any money borrowed under this section with interest thereon in accordance with the provisions of the Local Government Act. The resolution authorizing any such loan or loans may provide for the issue of notes or certificates of indebtedness of the municipality, or both, payable either on demand or at a fixed time, not more than six months from the date thereof, and bearing interest not exceeding six per centum per annum. Any temporary indebtedness incurred under the authority of this section, with the interest thereon, may be paid out of moneys raised by the issue and sale of "local improvement bonds" or "assessment bonds," or both, to be issued and sold as hereinafter provided, or may be included in the annual tax levy. (1915, c. 56, s. 12; C. S., s. 2721.)

Cross Reference.—As to the Local Government Act, see chapter 159.

§ 160-100. Assessment books prepared.—After the governing body of the municipality has levied the assessment against the property abutting upon the street or streets, the city clerk or person designated shall prepare from such assessment roll and deliver to the tax collector or person designated a well bound book styled Special Assessment Book, which shall be so ruled as to conveniently show:

(1) Name of owner of such property.
(2) The number of lot or part of lot and the plan thereof if there be a plan.
(3) The frontage of said lot.
(4) The amount that has been assessed against such lot.
(5) The amount of such installments and the day on which installments shall become due.

Such book shall be indexed according to the names of the owners of the property, and entries of all payments or partial payments shall be immediately entered upon said book when made, and said book shall be open to the inspection of any citizen of the municipality. (1915, c. 56, s. 13; C. S., s. 2722.)

Necessity of Special Book.—As between the abutting landowners upon the street improved by a city or town and the proper municipal authorities acting thereon, the failure of the latter to keep the special assessment book is not fatal to the validity of the assessments, if the original assessment roll or book is accessible, sufficient to give all necessary information of the property assessed, and available upon the statutory notice given. Vester v. Nashville, 190 N. C. 265, 129 S. E. 593 (1925).

Stated in Salisbury v. Arey, 224 N. C. 260, 29 S. E. (2d) 894 (1944).

§ **160-101. Apportionment of assessments.**—In any case where one or more special assessments shall have been made against any property for any improvement or improvements authorized by this chapter, and said property has been or is about to be subdivided and it is therefore desirable that said assessment or assessments be apportioned among the subdivisions of such property, the governing body may, with the consent of the owner or owners of said property, apportion said assessment or assessments, or the total thereof, fairly among said subdivisions, as same are benefited by the improvement and release such subdivisions, if any, as in the opinion of the governing body are not benefited by the improvement. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment or assessments except the part thereof apportioned to said subdivision, and the part of said original assessment or assessments apportioned to any such subdivision shall be of the same force and effect as the original assessment or assessments. At the time of making such apportionments, the governing body shall cause to be entered upon its minutes an entry to the effect that such apportionment is made with the consent of the owner or owners of the property affected, and such entry shall be conclusive of the truth thereof in the absence of fraud. Such re-assessments may include past due installments of principal, interest and penalty, if any, as well as assessments not then due, and the remaining installments shall fall due at the same dates as they did under the original assessment. (1929, c. 331, s. 1; 1935, c. 125.)

Editor's Note.—Prior to the 1935 amendment the last sentence of this section prohibited reassessment before payment of past due installments.

§ **160-102. Local improvement bonds issued.**—Whenever an assessment for any local improvement has been confirmed, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which shall be borne by the municipality at large shall be raised by the issuance of bonds of the municipality to be known as "local improvement bonds." Such bonds shall be issued as provided in the Municipal Finance Act. (1915, c. 56, s. 14; C. S., s. 2723.)

Cross Reference.—As to Municipal Finance Act, see § 160-367 et seq.

§ **160-103. Assessment bonds issued.**—Whenever an assessment for any local improvement has been confirmed, and twenty days have elapsed since the first publication of notice of such confirmation, the governing body may by resolution direct that the amount and proportion of the expense of such improvement which has been assessed upon the abutting property, or any part of such expense, shall be raised by the municipality by the issuance of its bonds, to be known as "assessment bonds." All moneys derived from the collection of assessments upon which assessment bonds are predicated, collected after the passage of the resolution authorizing such bonds, shall be placed in a special fund, to be used only for the payment of the principal and interest of assessment bonds issued under this section, and if at the time of the annual tax levy for any year in such municipality it shall appear that such fund will be for any cause insufficient to meet the principal and interest of such bonds maturing in such year, the amount of the deficiency shall be included in such tax levy. The amount of the assessments for two or more improvements may be included in a single issue of assessment bonds. (1915, c. 56, s. 15; C. S., s. 2724.)

§ 160-104. Improvements on streets abutting railroads.—Municipalities desiring to make street and sidewalk improvements on property owned and/or leased by railroad companies, are hereby authorized to make such improvements on any such street used as a public street, subject to the rights of any such railroad company to use and occupy the same for railroad purposes: Provided, however, that the petition or petitions contemplated and required by the provisions of this article, need not be signed by such railroad company or companies, nor shall any part of the railroad right of way be considered as abutting property, but the said petition shall be signed by at least a majority in number of the owners of property other than the railroad right of way, who must represent at least a majority of all the lineal feet frontage of the lands, other than said railroad right of way (a majority in interest of owners of undivided interest in any piece of property to be deemed and treated as one person for the purpose of the petition), abutting upon such street or streets proposed to be improved: Provided, further, that not more than one-half of the total cost of the street or sidewalk improvement made by such municipality, exclusive of so much of the cost as is incurred at street intersections, shall be specially assessed upon the lots or parcels of land abutting directly on the improvement, other than the property included in the railroad right of way, according to the extent of their respective frontage thereon, by an equal rate per foot of such frontage. (1931, c. 222, s. 1.)

Editor's Note.—Since a municipality may proceed to make street improvements without petition of the owners of abutting property (Shute v. Monroe, 187 N. C. 676, 123 S. E. 71 (1924), it is clear that where a railroad, owning half of the abutting property, could hold up the improvement by refusal to sign the petition, that the State may authorize the municipality to proceed without the railroad's consent. 9 N. C. Law Rev. 362.

Local Acts Not Repealed.—Chapter 222, Public Laws of 1931, from which this and the following section were codied, was intended to be merged into the framework of the Local Improvement Act of 1915, this article, and thus, under § 160-79, chapter 222 does not repeal the provisions of chapter 397, Private Laws of 1901, or chapter 215, Private Laws of 1925, relating to paving of streets in the city of Goldsboro, but the local acts will be construed as exceptions to the general statute. Goldsboro v. Atlantic Coast Line R. Co., 241 N. C. 216, 85 S. E. (2d) 125 (1954).

§ 160-105. Railroad rights of way and contracts as to streets unaffected.—Nothing contained in § 160-104 shall be construed so as to deprive any railroad company of any right which it may now or hereafter possess by reason of its ownership of any right of way.

Any additional expense which the railroad may incur in removing or altering any pavement or other improvements made under and by virtue of the provisions of § 160-104, which interfere with the railroad's use of its right of way, shall be borne by the municipality affected: Provided, such section shall not affect in any way existing contracts between municipalities and railroads for rights of way through streets, and shall not affect existing contracts between municipalities and railroads for upkeep and improvements of streets. (1931, c. 222, s. 1½.)

Cross Reference.—See note to § 160-104.

Article 10.

Inspection of Meters.

§ 160-106. Inspectors appointed.—In every city or town in the State of North Carolina where is furnished, for pay, electricity, gas or water by meter measure, the governing body of the city or town may appoint some competent person to act as inspector of meters, whose duty it shall be to inspect and test such meters and to carry out the provisions of this article as herein provided. (1909, c. 150, s. 1; C. S., s. 2729.)

§ 160-107. Time of appointment; oath, bond and compensation.—Such appointment, if made, shall be made at the first meeting in May of each year of such governing body, subject to the power of such city or town authorities to remove such appointee in the manner provided for the removal of its other appointees and to fill the vacancy caused by such removal. The compensation of such inspector shall be fixed and shall be paid by the city or town so appointing him, and such inspector shall upon his appointment take oath before the mayor of said city or town that he will faithfully perform the duties herein imposed upon him, and the governing body of the city or town may require the inspector to give bond in such sum as they may fix for the faithful discharge of his duties. (1909, c. 150, s. 2; C. S., s. 2730.)

§ **160-108. Apparatus for testing meters provided.**—Every person, firm, corporation or municipality furnishing for pay electricity, gas or water by meter measure in any city or town having appointed an inspector of meters, as aforesaid, shall provide and keep a suitable and proper apparatus for testing and proving the accuracy of the meters to be so furnished for use, by which apparatus all such meters shall be tested at their rated capacity. (1909, c. 150, s. 3; C. S., s. 2731.)

§ **160-109. Meters tested before installed.**—No person, firm, or corporation or municipality furnishing for pay eletcricity, gas or water by meter measure shall hereafter furnish, install and put in use any such meter in any city or town having appointed an inspector of meters, as aforesaid, until such meter shall first have been inspected and found correct by such inspector, and it shall be the duty of such inspector to test the same upon the written request of such proposed furnisher. No meter now in service shall be required to be taken out for test, except where there is doubt as to its accuracy and upon the written request of the consumer, as herein provided. (1909, c. 150, s. 4; C. S., s. 2732.)

§ **160-110. Inspection made upon complaint.**—When any consumer, by meter, of electricity, gas or water in any city or town having appointed an inspector of meters, as aforesaid, doubts the accuracy of such meter and desires to have the same tested, such consumer may file with the inspector of meters a written complaint of the meter and request that the same be tested, and shall at the same time deposit with the furnisher the sum of one dollar to cover the expense of taking out and replacing such meter, and thereupon it shall be the duty of such inspector as soon as practicable to accurately test said meter in the presence of and jointly with the authorized agent of the furnisher, and also in the presence of the complainant, if he so desires, and shall give to both the complainant and to the furnisher a written report of such test and the result thereof. (1909, c. 150, s. 5; C. S., s. 2733.)

§ **160-111. Repayment of deposit.**—If upon such test the meter is found to be incorrect, in that it registers more than two and one-half per cent too fast—that is, more than two and one-half per cent more electricity, gas or water than it should, then and in that event the furnisher shall return to the complainant the one dollar deposit and shall promptly properly adjust and repair the meter or furnish a correctly adjusted meter; but if upon such test the meter shall not register more than two and one-half per cent too fast—that is, more than two and one-half per cent more than it ought to—the one dollar deposit shall be retained by the furnisher to cover the expense of taking out and replacing the meter. (1909, c. 150, s. 6; C. S., s. 2734.)

§ **160-112. Adjustment of charges.**—If upon such test the meter shall register more than two and one-half per cent too fast, as above defined, the furnisher shall reimburse the complainant at the rate at which the meter registers too fast for a period of one month back; but if upon such test the meter shall be found to be incorrect, in that it registers more than two and one-half per cent too slow—that is, more than two and one-half per cent less electricity, gas or water than it should—then and in that event the complainant shall, in addition to the amount already charged him, pay at once to the furnisher at the rate at which the meter is too slow for a period of one month back, and the furnisher shall have the same rights for collecting such additional sum as is provided for the collecting of the past due and unpaid bills for electricity, gas or water, as the case may be. (1909, c. 150, s. 7; C. S., s. 2735.)

§ **160-113. Standard of accuracy.**—Any such meter having been tested and found to be not more than two and one-half per cent too slow nor more than two and one-half per cent too fast, as above defined, shall be considered correct, and such inspector shall so mark or stamp such meter and report the same to the governing body of the city or town. (1909, c. 150, s. 8; C. S., s. 2736.)

§ **160-114. Free access to meters.**—Nothing in this article shall be so construed as to prevent any furnisher of electricity, gas or water from having free access to the meters. (1909, c. 150, s. 9; C. S., s. 2737.)

Cited in Raleigh v. Mechanics, etc., Bank, 223 N. C. 286, 26 S. E. (2d) 573 (1943).

Article 11.

Regulation of Buildings.

§ **160-115. Chief of fire department.**—There is hereby created in the incorporated cities and towns of the State, where not already established by their charters, the office of chief of fire department. (1901, c. 677, s. 1; Rev., s. 4815; C. S., s. 2738.)

Cross Reference.—As to fire protection, see §§ 160-235 through 160-238. As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

§ **160-116. Election and compensation.**—The governing body of every incorporated city and town, when no provision is made in their charters for such office, shall elect a chief of fire department, fix his term of office, prescribe his duties and obligations, and see that he is reasonably remunerated by the city or town for the services required of him by law. They may change his duties and compensation from time to time, not inconsistent with the duties prescribed in this article. Where the governing body fails or neglects to perform such duty, the Insurance Commissioner shall call it to their attention and if necessary bring the matter before the proper court. Nothing herein may prevent any person elected hereunder from holding some other position in the government of the city or town. (1901, c. 677, s. 2; 1905, c. 506, s. 4; Rev., ss. 2981, 4816; 1915, c. 192, s. 1; C. S., s. 2739.)

Power Governmental.—The power to regulate and prevent fire is governmental, and a failure to exercise this power does not subject a city to action for negligence which causes loss by fire. Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849 (1912).

§ **160-117. Duties of chief of fire department.**—The chief of the fire department shall perform the duties required of him by this article; where such duties are not prescribed by the charters or governing body of incorporated cities and towns, it shall be his duty to preserve and care for the fire apparatus, have charge of the fighting and putting out of all fires, make annual reports to the city municipal governments, seek out and have corrected all places and conditions dangerous to the safety of the municipality from fire, look after buildings being erected with a view to their safety from fires, and do and perform the other duties prescribed by the governing boards of the several municipalities. (1901, c. 677, ss. 1, 3; Rev., ss. 4815, 4817; C. S., s. 2740.)

§ **160-118. Local inspector of buildings.**—The chiefs of fire departments hereinbefore provided for shall also be local inspectors of buildings for the cities or towns for which they are appointed and shall perform the duties required herein and shall make all reports required by the Insurance Commissioner, and shall make all inspections and perform such duties as may be required by the State law or city or town ordinance or by the said Insurance Commissioner: Provided, however, that any city or town may appoint and reasonably remunerate a local inspector of buildings, in which case the chief of fire department shall be relieved of the duties herein imposed. (1905, c. 506, s. 6; Rev., s. 2982; 1915, c. 192, s. 2; C. S., s. 2741.)

Local Modification.—Catawba: 1955, c. 656.

§ **160-119. Town aldermen failing to appoint inspectors.**—If the aldermen or commissioners of any city or town shall fail or refuse to appoint a chief of the fire department, or shall fail or refuse to reasonably remunerate him, they shall be guilty of a disdemeanor. The section shall not apply to the aldermen or commissioners of any city or town, where such city or town is by law exempt from the law regulating and controlling the erection and inspection of buildings. (1905, c. 506, s. 4; Rev., s. 3607; C. S., s. 2742.)

§ **160-120. Town officers; inspection of buildings.**—If any chief of any fire department or local inspector of buildings shall fail to perform the duties required of him by law or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor. (1905, c. 506, s. 5; Rev., s. 3610; 1915, c. 192, s. 17; C. S., s. 2743.)

§ **160-121. Electrical inspectors.**—The governing body of any incorporated city or town may in their discretion appoint an electrical inspector in addition to the building inspector, and when said electrical inspector is so appointed he shall do and perform all things herein set out for the building inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the building inspector shall be relieved of such duties. (1905, c. 506, s. 33; Rev., s. 2983; C. S., s. 2744.)

§ **160-122. County electrical inspectors.**—The county commissioners of each county may, in their discretion, designate and appoint one or more electrical inspectors, who shall qualify as hereinafter prescribed, whose duty shall be to enforce all State and local laws governing electrical installations and materials, and to make inspections of all new electrical installations and such re-inspections as may be prescribed by the county commissioners in buildings located in any town of one thousand population or less and/or those buildings located outside the corporate limits of all cities and towns, and not otherwise included in this article, and to issue a certificate of inspection where such installations fully meet the requirements for such installations as set forth in this article, or such additional requirements as the board of county commissioners may prescribe. Nothing contained in this article shall be construed as prohibiting said board of county commissioners designating as county inspector any person who also has or may be designated as electrical inspector in any city or town located within said county, or from prohibiting two or more counties from designating the same inspector to perform the duties herein mentioned for such two or more counties. The county commissioners shall also fix the fees to be charged by such county inspector, which fees shall be paid by the owner of the properties so inspected.

The fees collected by the inspector may be retained by him in payment for his services, or the county commissioners, in their discretion, may pay the inspector a fixed salary, in which case the fees collected for permits and inspections shall be paid to the county treasury.

It shall be unlawful for the county electrical inspector or any of his authorized agents to engage in the business of installing electrical wiring, devices, appliances or equipment, and he shall have no financial interest in any concern engaged in such business in the county at any time while holding such office as herein provided for.

Before confirmation of his appointment, the electrical inspector shall take and pass a qualifying examination to be based on the last edition of the National Electrical Code, as filed with the Secretary of State. This examination shall be in writing and shall be conducted according to the rules and regulations prescribed by and under the supervision of the State Electrical Engineer and Inspector and the Board of Examiners of Electrical Contractors. The prescribed rules and regulations may provide for the appointment of class I, class II and class III inspectors in accordance with the qualifications revealed by the examination with respect to the installation of various types and character of equipment and facilities. Examinations shall be given quarterly in Raleigh, or in such other places as may be designated by the State Electrical Engineer and Inspector, at his discretion. Examinations shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as electrical inspector. An electrical inspector having qualified for a class I appointment shall be eligible without further examination to serve as electrical inspector anywhere in the State, but an inspector having qualified for a class II or class III appointment shall be limited to the territory for which he may qualify.

Upon passing the required examination by any person, a certificate approving him as inspector for a designated territory shall be issued by the Commissioner of Insurance. Such certificate must be renewed annually between January 1st and January 31st and shall be subject to cancellation at any time if the inspector is removed from office for cause by the board of county commissioners, which removal is hereby authorized. The fee for examination shall be five dollars ($5.00), to be returned if the applicant fails to pass. The annual renewal fees for a certificate of appointment shall be one dollar ($1.00). If the person appointed as electrical inspector by the county commissioners fails to take the examination or to make the necessary passing grade, the county commissioners shall continue to make such appointments until one or more applicants has passed the examinations. In the interim, a temporary inspector may act with the approval of the Commissioner of Insurance.

The inspector appointed shall give a bond approved by the county commissioners for the faithful performance of his duties. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651.)

Local Modification.—Caswell: 1963, c. 1205.

Cross Reference.—As to county plumbing inspectors for certain counties, see G. S. 153-9, subdivision (47).

Editor's Note.—Prior to the 1941 amendment this section provided for only one inspector. The 1947 amendment made changes in the first paragraph and added all of the section beginning with the second paragraph. The 1951 amendment struck out "to issue permits for" formerly appearing after the word "materials" near the beginning of the section.

Cited in In re North Carolina Fire Ins. Rating Bureau, 245 N. C. 444, 96 S. E. (2d) 344 (1957).

§ **160-123. Deputy inspectors.**—All duties imposed by this article upon the building inspector may be performed by a deputy appointed by such inspector. (1905, c. 506, s. 32; Rev., s. 2984; C. S., s. 2745.)

§ **160-124. Fire limits established.**—The governing body of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns. (1905, c. 506, s. 7; Rev., s. 2985; C. S., s. 2746.)

Power Discretionary.—The courts will not pass upon the reasonableness of fire limits established by an incorporated town under authority conferred by the legislature, at least where the limits established appear to be reasonable, and without palpable oppression or injustice done. State v. Lawing, 164 N. C. 492, 80 S. E. 69 (1913).

Reasonableness of Ordinances.—While it might be unreasonable to prohibit even the slightest repairs to wooden buildings standing within the fire limits prior to the passage of a statute as ordinance establishing such limits, the power to prevent repairs is delegated and presumably exercised for the protection of property, and where a wooden structure within the bounds is partially destroyed by fire already, it is not unreasonable to require a new roof to be made of material less liable to combustion, or to forbid the repairs altogether when the damage to the building is serious, and to that end to compel the owners to give notice to the town authorities of their purpose to repair, and of the character of the contemplated work. State v. Johnson, 114 N. C. 846, 19 S. E. 599 (1894).

Cited in 5 N. C. Law Rev. 241.

§ **160-125. Punishment for failing to establish fire limits.**—If the aldermen or commissioners of any city or town shall fail or refuse to establish and define the fire limits for such town according to law, they shall be guilty of a misdemeanor. This section shall not apply to aldermen or commissioners of those towns which are exempt from the law governing the inspection of buildings. (1905, c. 506, s. 7; Rev., s. 3608; C. S., s. 2747.)

§ **160-126. Building permits.**—Before a building is begun the owner of the property shall apply to the inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of the building law, a copy of which shall accompany the permit. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and where the General Statutes of North Carolina require that plans for certain types of construction be prepared only by a registered architect or a registered engineer, no permit shall be issued unless such plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. As the building progresses the inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this law. As soon as the building is completed the owner shall notify the inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with the building law. If the building meets the requirements of the building law the inspector shall then issue to the owner of the building a certificate which shall state that he has complied with the requirements of the building law as to that particular building giving description and locality and street number if numbered. The inspector shall keep his record so that it will show readily by reference all such buildings as are approved. The inspector shall report to the Insurance Commissioner every person neglecting to secure such permit and certificate, and also bring the matter before the mayor, recorder or municipal court for their attention and action. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C. S., s. 2748; 1957, c. 817.)

Local Modification.—Town of Whiteville: 1959, c. 786.

Cross References.—As to the North Carolina building code, see § 143-136 et seq. As to regulations as to issue of building permits, see § 87-14.

Editor's Note.—The 1957 amendment inserted the third sentence.

Ordinance Contrary to Statute Void.—By this section a permit from the inspector is required before an owner may repair his buildings, and an ordinance requiring that the permit be gotten from the board of aldermen is contrary to this statute and void. State v. Eubanks, 154 N. C. 628, 70 S. E. 466 (1911).

Rule Must Be Uniform.—The ordinance of a city providing that no person shall erect within the city limits any house or building of any kind, or add to, improve or change any building without having first obtained permission from the board of aldermen, is void, for the reason that it does not prescribe a uniform rule of action for governing the exercises of the discretion of the alderman, but on the contrary, leaves the rights of property subject to their arbitrary discretion. State v. Tenant, 110 N. C. 609, 14 S. E. 387 (1892).

Permit Secured by Mandamus.—Where a city, under an ordinance, with legislative authority in such matters, has issued a permit to build an additional room to a residence, and thereafter has recalled the permit pending the settlement of a dispute as to whether it would be situate upon an alley claimed to have been widened, and upon the finding by the jury that the alley had not been widened and that the room would not be thereon, a mandamus is the proper remedy, though the form of the issue was incorrect. Clinard v. Winston-Salem, 173 N. C. 356, 91 S. E. 1039 (1917).

§ **160-127. Material used in construction of walls.**—The walls of all buildings in cities or towns where this article applies, other than frame or wooden buildings, shall be constructed of brick, iron or other hard, incombustible material. All rules, regulations and requirements contained in the building law, or set out in this article in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated. (1905, c. 506, s. 9; Rev., s. 2987; 1915, c. 192, s. 4; C. S., s. 2749.)

§ **160-128. Frame buildings within fire limits.**—Within the fire limits of cities and towns where this article applies, as established and defined, no frame or wooden building shall be hereafter erected, altered, repaired, or moved except upon the permit of the building inspector, approved by the Insurance Commissioner. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C. S., s. 2750.)

Cited in 5 N. C. Law Rev. 241.

§ **160-129. Thickness of walls.**—The walls of warehouses, stores, factories, livery stables, hotels or other brick or stone buildings for business purposes in cities or towns where this article applies, except fireproof buildings where the framework is of steel, shall conform to the following schedules:

Height of Building	Minimum Thickness in Inches of Wall				
	1st	2d	3d	4th	5th
One-store building	13	..	..	..	..
Two-story building	17	13	..	..	..
Three-story building	17	17	13	..	..
Four-story building	22	17	17	13	..
Five-story building	26	22	17	17	13

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra cotta, stone, cast iron or cement. Upon written application approved by the building inspector the Insurance Commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in brick walls where such thickness is compensated for by pilasters. The roofs of all buildings named in this section shall be of metal, slate or tile or gravel or other standard fireproof roofing. (1905, c. 506, s. 10; Rev., s. 2989; 1915, c. 192, s. 6; C. S., s. 2751.)

Local Modification.—Durham: 1933, c. 254.

§ **160-130. Foundation of walls; openings and doors protected.**—In all buildings mentioned in the preceding section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that as near as practicable the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness. No opening or doorway shall be cut through a party or fire wall of a brick or stone building without a permit from the inspector, and every such door or opening shall have top, bottom and sides of stone, brick or iron, shall be closed by two sets of standard metal-covered doors (separated by the thickness of the wall) hung to rabbeted iron frames or to iron hinges in brick or stone rabbets, shall not exceed ten feet in height by eight feet in width, and every opening other than a doorway shall be protected in a manner satisfactory to the inspector. (1905, c. 506, s. 11; Rev., s. 2990; C. S., s. 2752.)

§ **160-131. Metallic standpipes required.**—All business buildings being more than fifty-six feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty feet in height, shall have a four-inch or larger metallic standpipe within or near the front wall extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half inch hose coupling on each floor. The building inspector may, with the approval of the Insurance Commissioner, allow two or more standpipes of smaller size and proper hose coupling, provided they are of such sizes and number as to be at least equivalent in service to the large standpipes required. All hose coupling shall conform to the size and pattern adopted by the fire department. (1905, c. 506, s. 12; Rev., s. 2991; 1915, c. 192, s. 7; C. S., s. 2753.)

§ **160-132. Construction of joists.**—The ends of joists or beams entering a brick wall shall be cut not less than three-inch bevel so as not to disturb the brickwork by any deflection or breaking of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists. (1905, c. 506, s. 13; Rev., s. 2992; C. S., s. 2754.)

§ **160-133. Chimneys and flues.**—All fireplaces and chimneys in stone or brick walls in any building hereafter erected and any chimneys or flues hereafter altered or repaired shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast. (1905, c. 506, s. 14; Rev., s. 2993; C. S., s. 2755.)

§ **160-134. Chimneys not built on wood.**—No chimney shall be started or built upon a beam of wood or floor, the brickwork in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue. (1905, c. 506, s. 16; Rev., s. 2994; C. S., s. 2756.)

§ **160-135. Construction of flues.**—All flues shall extend at least three feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra cotta, stone, cast iron or cement. In all buildings hereafter erected the stone or brickwork of all flues and the chimney shafts of all furnaces, boilers, bakers' ovens, large cooking ranges, and laundry stoves, and all flues used for similar purposes shall be at least eight inches in thickness, with the exception of smoke flues, which are lined with fire clay lining or cast iron. These may be four inches in thickness, but this shall not apply to metal stacks of boiler houses where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed either in walls of eight inches thickness or with smoke flues lined with cast iron or fire clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and be carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue or flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe or taken down. (1905, c. 506, s. 17; Rev., s. 2995; C. S., s. 2757.)

§ **160-136. Hanging flues.**—Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast iron or fire clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings, or roofs. Flues not lined as above shall be built from the ground eight inches thick of the best hard brick with the joints struck smooth on the inside. (1905, c. 506, s. 18; Rev., s. 2996; 1915, c. 192, s. 8; C. S., s. 2758.)

§ **160-137. Flues cleaned on completion of building.**—The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building. (1905, c. 506, s. 19; Rev., s. 2997; C. S., s. 2759.)

§ **160-138. Construction of stovepipes.**—No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceiling or partitions shall enter any flue unless such pipe shall be at least twelve inches from such floors, ceiling or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind or other woodwork they shall be guarded by either a double collar of metal with at least three inches air space and holes for ventilation or by a soapstone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the inspector, endanger the premises, the inspector shall at once notify in writing the owner or agents of said premises. If such owner or agent fails for a period of forty-eight hours after the service of said notice upon him to make such chimney, flue or heating apparatus safe he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected. (1905, c. 506, s. 20; Rev., s. 2998; 1915, c. 192, s. 9; C. S., s. 2760.)

§ **160-139. Height of foundry chimneys.**—Iron cupolas or other chimneys of foundries shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola or chimney. (1905, c. 506, s. 22; Rev., s. 2999; C. S., s. 2761.)

§ **160-140. Steampipes; how placed.**—No steampipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then the distance shall not be less than one inch. All steampipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incombustible material. (1905, c. 506, s. 21; Rev., s. 3000; C. S., s. 2762.)

§ **160-141. Electric wiring of houses.**—The electric wiring of houses or buildings for lighting or for other purposes shall conform to the regulations prescribed by the organization known as National Board of Fire Underwriters. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for the purpose of illuminating any building belonging to any person, firm or corporation to be turned on without first having had an inspection made of the wiring by the building inspector and having received from the inspector a certificate approving the wiring of such building. It shall be unlawful for any person, firm or corporation engaged in the business of selling electricity to furnish any electric current for use for illuminating purposes in any building or buildings of any person, firm or corporation, unless the said building or buildings have been first inspected by the inspector of buildings and a certificate given as above provided. The fee that shall be allowed said inspector of buildings for the work of such inspection of electrical wiring shall be one dollar for each building inspected, to be paid by the person applying for the inspection. (1905, c. 506, s. 23; Rev., s. 3001; C. S., s. 2763.)

Local Modification.—Alamance, city of Burlington: 1931, c. 133; Moore: 1931, c. 49; city of Roanoke Rapids: 1953, c. 348, s. 1; city of Salisbury: 1949, c. 1044.

Cross Reference.—As to power of the municipality to license electricians, see § 160-266.

Great Care Required.—There is nothing by which the user of an electrical appliance can detect the presence of an unusual high voltage or deadliness of current before touching the wire or coming in contact with it, and the greatest degree of care is required of those furnishing this deadly instrumentality to guard against the danger of its ordinary use as the circumstances may require. McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

Liability for Injuries.—Where the furnisher of electricity for a building was, under its contract with the owner, required to furnish a low voltage of electricity for lighting and various domestic uses, and there is evidence tending to show that in attempting to iron clothes within the building with an electric iron the plaintiff touched the ironer and received a severe shock of electricity, to her injury, which should not and would not ordinarily have occurred by such use had the defendant supplied the current it has contracted to do, the doctrine of res ipsa loquitur applies, and the issue of actionable negligence should be submitted to the jury, denying defendant's motion as of nonsuit thereon. McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

Applied in Savage v. Kinston, 238 N. C. 551, 78 S. E. (2d) 318 (1953).

Quoted in Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

§ **160-142. Quarterly inspection of buildings.**—Once in every three months the local inspector of buildings shall make a personal inspection of every building within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the Insurance Commissioner, and shall report to the Insurance Commissioner all defects found by him in any building upon a blank furnished him by the Insurance Commissioner. The building inspector shall notify the owner or occupant of buildings of any defects, and notify them to correct the same within a reasonable time. (1905, c. 506, s. 25; Rev., s. 3002; 1915, c. 192, s. 10; C. S., s. 2764.)

Cited in McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

§ **160-143. Annual inspection of buildings.**—At least once in each year the local inspector shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this article are complied with, and the local inspector alone or with the Insurance Commissioner or his deputy shall at all times have the right to enter any dwelling, store or other building and premises to inspect same without molestation from anyone. It shall be the duty of the local building inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected. (1905, c. 506, s. 29; Rev., s. 3003; 1915, c. 192, s. 11; C. S., s. 2765.)

Cited in McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

§ **160-144. Record of inspections.**—The local inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name and residence of owner, location of building, how it is to be occupied, date of inspection, what defects found and when remedied and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued. (1905, c. 506, s. 30; Rev., s. 3004; C. S., s. 2766.)

Cited in McAllister v. Pryor, 187 N. C. 832, 123 S. E. 92 (1924).

§ **160-145. Reports of local inspectors.**—The local inspector shall report before the fifteenth of February of each year the number and dates of general and quarterly inspections during the year ending the thirty-first day of December upon blanks furnished by the Insurance Commissioner, and furnish such other information and make such other reports as shall be called for by the Insurance Commissioner. (1905, c. 506, s. 31; Rev., s. 3005; 1915, c. 192, s. 12; C. S., s. 2767.)

§ **160-146. Fees of inspector.**—For the inspection of every new building, or old building repaired or altered, the local inspector shall charge and collect an inspection fee before issuing the building certificate, as follows: Two dollars for each one-story mercantile storeroom, livery stable or building for manufacturing, and fifty cents for each additional story, and for other buildings twenty-five cents per room; but the inspection fee shall in no case exceed five dollars. The building inspector shall be paid an adequate salary by the city or town for the quarterly and annual inspection of buildings as provided for in this article, and also for the duties under this section where the fees are collected and paid into the treasury of the municipality. (1905, c. 506, s. 27; Rev., s. 3006; 1915, c. 192, s. 13; C. S., s. 2768.)

Local Modification.—Alamance, city of Burlington: 1931, c. 133; Lenoir: 1933, c. 294; Moore: 1931, c. 49; city of Roanoke Rapids: 1953, c. 348, s. 2; city of Salisbury: 1949, c. 1044.

§ **160-147. Care of ashes, waste, etc.**—Ashes shall be removed in metal vessels and unless moved by city drays shall be stowed in brick, stone or metal receptacles or removed by owner to a place not less than fifteen feet from any wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslaked lime shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet and the floors under them shall be protected by metal or sand box. (1905, c. 506, s. 24; Rev., s. 3007; C. S., s. 2769.)

§ **160-148. Ordinances to enforce the law.**—No provision of this article shall be held to repeal the power of any incorporated city or town to make and enforce any further rules and regulations under the powers granted in their several charters, and said cities and towns may pass ordinances for the enforcement of any provision of this article. (1905, c. 506, s. 34; Rev., s. 3008; C. S., s. 2770.)

§ **160-149. Defects in buildings corrected.**—Whenever the local inspector finds any defects in any new building, or finds that said building is not being constructed or has not been constructed in accordance with the provisions of this law, or that an old building because of its condition is dangerous and likely to cause a fire, it shall be his duty to notify the owner of the building of the defects or the failure to comply with this law, and the owner or builder shall immediately remedy the defect and make the building comply with the law. The owner or builder may appeal from the decision of the local inspector to the Insurance Commissioner. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C. S., s. 2771.)

§ **160-150. Owner of building failing to comply with law.**—If the owner or builder erecting any new building, upon notice from the local inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, so as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every week during which any defect in the building is willfully allowed to remain after notice from the inspector shall constitute a separate and distinct offense. (1905, c. 506, s. 28; Rev., s. 3798; 1915, c. 192, s. 18; C. S., s. 2772.)

§ **160-151. Unsafe buildings condemned.**—Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. No building now or hereafter built shall be altered, repaired or moved, until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law. (1905, c. 506, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C. S., s. 2773; 1929, c. 199, s. 1.)

Cross Reference.—As to repair, closing and demolition of unfit dwellings, see § 160-182 et seq. and § 160-200, subdivision (28).

Editor's Note.—The 1929 amendment added "to life" in the term "dangerous to life" near the beginning of the section.

Cited in State v. Eubanks, 154 N. C. 628, 70 S. E. 466 (1911); Bonapart v. Nissen, 198 N. C. 180, 151 S. E. 94 (1930).

§ **160-152. Punishment for allowing unsafe building to stand.**—If the owner of any building which has been condemned as unsafe and dangerous to life by any local inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall be guilty of a misdemeanor and shall pay a fine of not less than ten nor more than fifty dollars for each day such building continues after such notice. (1905, c. 506, s. 15; Rev., s. 3802; 1915, c. 192, s. 19; C. S., s. 2774; 1929, c. 199, s. 2.)

Editor's Note.—The 1929 amendment inserted "to life" near the beginning of the section.

Cited in Bonapart v. Nissen, 198 N. C. 180, 151 S. E. 94 (1930).

§ **160-153. Removing notice from condemned buildings.**—If any person shall remove any notice which has been affixed to any building by the local inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars for each offense. (1905, c. 506, s. 15; Rev., s. 3799; C. S., s. 2775.)

Cited in Bonapart v. Nissen, 198 N. C. 180, 151 S. E. 94 (1930).

§ **160-154. To what towns applied.**—This article shall apply only to incorporated cities and towns of over one thousand inhabitants according to the last United States census, and such other cities and towns in the State as shall by a vote of their board of aldermen or governing body adopt this article. (1905, c. 506, s. 35; Rev., s. 3011; 1915, c. 192, s. 16; C. S., s. 2776.)

ARTICLE 12.

Recreation Systems and Playgrounds.

§ **160-155. Title.**—This article shall be known and may be cited as the "Recreation Enabling Law." (1945, c. 1052.)

Local Modification.—For act modifying the former article as to Scotland County, see 1939, c. 359, s. 2.

Editor's Note.—The 1945 amendment rewrote this article, formerly containing twelve sections to appear as set out in present §§ 160-155 through 160-164. The amendatory act provides: "Nothing in this act shall have the effect of repealing public-local or private acts creating or authorizing the creation of any recreational system by a unit or relating to the management thereof."

The former article was derived from Public Laws 1923, c. 83, and was codified as §§ 2776(a)-2776(l) of the Consolidated Statutes.

The former article was summarized in 1 N. C. Law Rev. 271.

Construction of Swimming Pool Is Public Purpose.—While the construction of a swimming pool as a part of a city's recreation system may not be financed as a necessary expense of government under our constitutional limitation, N. C. Const., art. VII, § 7, without a vote of the people, nevertheless, such a facility is a public purpose. Greensboro v. Smith, 239 N. C. 138, 79 S. E. (2d) 486 (1954).

Cited in Greensboro v. Smith, 241 N. C. 363, 85 S. E. (2d) 292 (1955); Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

§ **160-156. Declaration of State public policy.**—As a guide to the interpretation and application of this article, the public policy of this State is declared to be as follows: The lack of adequate recreational programs and facilities is a menace to the morals, happiness and welfare of the people of this State in times of peace as well as in time of war. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by the governing bodies of the several political and educational subdivisions of the State. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this State require an adequate recreation program and that the creation, establishment and operation of a recreation system is a governmental function and a necessary expense as defined by article VII, section seven, of the Constitution of North Carolina. (1945, c. 1052.)

Purpose and Effect of Section.—The declaration contained in this section only qualifies recreational facilities as a necessary expense in order that funds derived from ad valorem taxes may be expended on such facilities without the necessity of a vote of the people. It does not impose any obligation on governmental units to establish recreational facilities but is simply an enabling law. Tonkins v. Greensboro, 162 F. Supp. 549 (1958).

Stated in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

Cited in Glenn v. Raleigh, 246 N. C. 469, 98 S. E. (2d) 913 (1957).

§ 160-157. Definitions.—(a) Recreation, for the purpose of this article, is defined to mean those activities which are diversionary in character and which aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural development and experiences of a leisure time nature.

(b) Unit, for the purpose of this article, means county, city and town. (1945, c. 1052.)

§ 160-158. Powers.—The governing body of any unit, as defined in § 160-157, may exercise the following powers for recreational purposes:

(1) Establish and conduct a system of supervised recreation for such unit.

(2) Set apart for use as parks or playgrounds, recreational centers or facilities, any lands or buildings owned by or leased to such unit and may improve and equip such lands or buildings.

(3) Acquire lands or buildings by gift, purchase, lease or loan, or by condemnation as provided by chapter forty, Eminent Domain, of the General Statutes.

(4) Accept any gift or bequest of money or other personal property or any donation to be applied, principal or income, for recreational use.

(5) Provide, construct, equip, operate and maintain parks, playgrounds, recreation centers and recreation facilities, and all buildings and structures necessary or useful in connection therewith.

(6) Appropriate funds for the purpose of carrying out the provisions of this article. (1945, c. 1052.)

Editor's Note.—The cases cited below, except for Eakley v. Raleigh, were decided under former § 160-156 authorizing the governing body of a city, town, county or school district to dedicate property already owned for use as playgrounds, recreation centers, etc.

Dedication for Recreation Facilities Is for Public Purpose.—The power of cities to dedicate real property for use as recreation centers and for other recreational purposes was expressly conferred by former § 160-156, and the exercise of this power was in the public interest and for a public purpose. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945), citing White v. Charlotte, 209 N. C. 573, 183 S. E. 730 (1936); Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936). See § 160-200, subdivision (12).

Issuance of Bonds.—Municipal corporations were given authority by former § 160-156 and by §§ 160-200, subdivision (12) and 160-229, to establish parks and playgrounds necessary to the maintenance of the health of their inhabitants, and an ordinance of a populous industrial city which provides for the issuance of bonds to establish and maintain parks and playgrounds for the children of the city was held a valid exercise of its police power under legislative authority for the promotion of the public health, safety, and morals. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936).

Expenditures for parks and recreational facilities seem to fall within the class of water and sewer facilities described in §§ 160-239 and 160-255 when operated in a governmental capacity; that is, for direct benefit by the citizens of the municipality. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

§ **160-159. Funds.**—If the governing body of any unit, as defined in § 160-157, finds it necessary for the purpose of carrying out the provisions of this article, the governing body is hereby authorized to call a special election without a petition for that purpose as provided by § 160-163, and submit as therein provided to the qualified voters of said unit the question of whether or not a special tax shall be levied and/or bonds issued for the purpose of acquiring lands for parks, playgrounds and buildings, and the improvement thereof, and for equipping and operating same. (1945, c. 1052.)

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

§ **160-160. System conducted by unit or recreation board.**—If a recreational system is established, it may be conducted by the unit as any other department of the unit is conducted, or if the governing body of the unit determines that it is for the best interest of the system that it be supervised and directed by a recreation board or commission, then such governing body may create such board or commission by ordinance or resolution to be known as the "recreation board or commission of the unit" and may vest such board or commission with the authority to provide, maintain, conduct and operate the recreational system with authority to employ directors, supervisors and play leaders and such other officers or employees as may be deemed best within the budget provided for the commission or board by the unit or from appropriations made by it, or from other funds in the hands of the commission or board. The board or commission may be vested with such powers and duties as to the governing body may seem proper. (1945, c. 1052.)

§ **160-161. Appointment of members to board.**—The board or commission shall be appointed by the governing body of the unit and shall consist of five or more members. After the governing body of the unit has determined the number of members to compose the recreation board or commission, a plan shall be worked out whereby at least one-third of the members shall serve for a term of one year, at least one-third for a term of two years and the remainder for a term of three years. Upon the expiration of their original terms of office, each succeeding term shall be for three years and until their successors qualify for office. Vacancies in the board or commission shall be filled for the unexpired term by appointment of the governing body of the unit. The members shall serve without compensation. Members, one of whom may represent the governing body of the unit, one the school system serving the unit, one the welfare department serving the unit, and one the health department serving the unit, may serve as ex officio members of the recreation boards or commissions and may vote and perform the same duties as other members of the boards or commissions. The recreation board or commission at its first meeting shall appoint a chairman and such other officers as may be deemed proper for the conduct of its business and shall adopt rules and regulations to govern its procedures, and may adopt rules and regulations from time to time for the purpose of governing the use of parks, playgrounds, recreation centers and facilities. (1945, c. 1052; 1949, c. 1204; 1951, c. 126.)

Local Modification.—City of Wilson: 1961, c. 723; 1963, c. 151; town of Whiteville: 1957, c. 605.

Editor's Note.—The 1949 and 1951 amendments rewrote this section.

§ **160-162. Power to accept gifts and hold property.**—The recreation board or commission may accept any grant, lease, loan, or devise of real estate or any gift or bequest of money or other personal property, or any donation to be applied, principal or income, for either temporary, immediate or permanent recreational use; but if the acceptance of any grant or devise of real estate, or gift or bequest of money or other personal property will subject the unit to expense for improvement or maintenance the acceptance thereof shall be subject to the approval of the governing body of such unit. Lands or devises, gifts or bequests, may be accepted and held subject to the terms under which such land or devise, gift or bequest, is made, given or received. (1945, c. 1052.)

§ 160-163. Petition for establishment of system and levy of tax; election.—A petition signed by at least fifteen per cent of the qualified and registered voters in the unit may be filed in the office of the clerk or other proper officer of such unit requesting the governing body of such unit to do any one or all of the following things:

(1) Provide, establish, maintain and conduct a supervised recreation system for the unit.

(2) Levy an annual tax of not less than three cents (3c.) nor more than ten cents (10c.) on each one hundred dollars of assessed valuation of the taxable property within such unit for providing, conducting and maintaining a supervised recreation system.

(3) Issue bonds of the unit in an amount specified therein and lexy a tax for the payment thereof, for the purpose of acquiring, improving and equipping lands or buildings or both for parks, playgrounds, recreation centers and other recreational facilities.

When the petition is filed, it shall be the duty of the governing body of such unit to cause the question petitioned for to be submitted to the voters at a special election to be held in such unit within ninety days from the date of the filing, which election shall be held as now provided by law for the holding of general elections in such units.

If the proposition submitted at such election shall receive a majority vote of the qualified registered voters who shall vote thereon at such election, the governing body of the unit shall, by appropriate ordinance or resolution, put into effect such proposition as soon as practicable. (1923, c. 83, s. 8; C. S., s. 2776(h); 1945, c. 1052; 1951, c. 933, s. 1.)

Editor's Note.—The 1951 amendment deleted "except in all such elections a special registration shall be provided" formerly appearing at the end of the next to the last paragraph and substituted "voters who shall vote thereon" in lieu of "electors" formerly appearing in the last paragraph.

Cited in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946); Glenn v. Raleigh, 246 N. C. 469, 98 S. E. (2d) 913 (1957).

§ 160-163-1. Validation of bond elections.—All elections heretofore held approving the issuance of bonds under the authority of the Recreation Enabling Law are hereby ratified, approved, confirmed and validated. (1951, c. 933, s. 2.)

§ 160-164. Joint playgrounds or neighborhood recreation centers.—Any two or more units may jointly provide and establish, operate and conduct and maintain a supervised recreation system and acquire, operate, improve and maintain property, both real and personal, for parks, playgrounds, recreation centers and other recreational facilities and activities, the expense thereof to be proportioned between the units participating as may to them seem just and proper. (1945, c. 1052.)

§§ 160-165, 160-166: Deleted by Session Laws 1945, c. 1052.

Editor's Note.—Former §§ 160-165 and 160-166 appeared in this article before it was rewritten by the 1945 Act. See note to § 160-155.

Article 12A.

Bird Sanctuaries.

§ 160-166.1. Municipalities authorized to create bird sanctuaries within their territorial limits.—From and after March 27, 1951, the governing body of any municipality in the State of North Carolina may, in its discretion, by ordinance, create and establish a bird sanctuary within the territorial limits of such municipality: Provided, no ordinance of any governing body of any municipality adopted pursuant hereto may protect any birds classed as predatory by the Wild Life Resources Commission or by the General Statutes of North Carolina nor may the protection of such ordinance extend to pigeons, crows, starlings or English sparrows. (1951, c. 411, s. 1.)

Local Modification.—New Hanover: 1963, c. 1124.

§ 160-166.2. Penalty for violation.—Upon the creation and establishment of a bird sanctuary by any municipality in this State under the provisions of § 160-166.1, it shall be unlawful for any person to hunt, kill or trap any birds within the territorial limits of such municipality. Any person violating the provisions of an ordinance passed by any municipality under the provisions of § 160-166.1 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1951, c. 411, s. 2.)

Local Modification.—New Hanover: 1963, c. 1124.

ARTICLE 13.

Market Houses.

§ 160-167. Municipalities and counties authorized to act jointly; location of house, etc.—Any city, town, or county, separately, or any group or combination of such governmental units may jointly, establish, construct, own, maintain, and operate a market house or houses at such place or places as the governing body or bodies thereof may determine. For the purpose aforesaid, such city, town or county, or any group or combination thereof, may lease, purchase or otherwise acquire and hold, separately or jointly as tenants in common of equal interest, land necessary as a site for such market house or houses and build thereon such market house or houses, the cost thereof to be borne by the governmental units participating therein. The cost of any such building or buildings shall not be less than two thousand five hundred dollars ($2,500.00) nor more than five hundred thousand dollars ($500,000.00). In connection with and as a part of such market house or houses, the governing body of any governmental unit or any group of them acting jointly, may also provide, establish, maintain, and operate open-air market places, abattoirs, cold storage plants and canning plants for preserving and canning such fruits, vegetables, and other produce as may be left unsold from day to day or may be in excess of present marketing requirements, or which may be bought; and they are authorized to establish, maintain and operate places, scales and equipment for weighing, grinding and measuring corn, grain, fodder, vegetables, fruits, and other farm products. (1923, c. 158, s. 1; C. S., s. 2776(m); 1953, c. 901, s. 1.)

Cross Reference.—As to power of municipalities acting alone to establish markets, see §§ 160-53, 160-200, subdivision (20), and 160-228.

Editor's Note.—The 1953 amendment rewrote this section.

This article, prior to amendment, is summarized in 1 N. C. Law Rev. 272.

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ 160-168. Control and management; board of managers; regulations; leasing space; inspection; manager and other employees.—In the event any governmental unit shall separately establish a market house or houses under authority of this article, the control and management thereof shall be vested in the governing board of such unit. In the event any group of such governmental units shall jointly establish market house or houses under authority of this article, the control and management thereof shall be vested in a board of managers composed of two members each from the governing boards of the participating units who shall serve ex officio in such capacity and shall be named by the governing board of the participating units. The board of managers is authorized to make all necessary rules and regulations covering such construction, maintenance and operation. It may provide for the letting and leasing of stalls or space therein to persons, firms and corporations and fix the rental thereof. It may prescribe the time, place and manner of sale of fish, meats, fruits, vegetables, and other farm produce therein and provide for the inspection of all foodstuffs offered for sale, and for the condemnation of such as may be unfit for sale or consumption. The board of managers may employ a manager and such other employees as may be necessary to maintain and operate such market house or houses. (1923, c. 158, s. 2; C. S., s. 2776(n); 1953, c. 901, s. 2.)

Editor's Note.—The 1953 amendment rewrote this section.

§ **160-169:** Repealed by Session Laws 1953, c. 901, s. 3.

§ **160-170. Special tax; specific appropriation.**—To assist in and provide funds for the carrying out of the provisions and purposes of this article, the county commissioners of the county and the governing body of the city in which any market house or houses may be established under this article may each levy annually, as a part of their general levy for general purposes and not as a specially authorized tax, a tax of not exceeding two cents on each one hundred dollars ($100.00) value of real and personal property within their respective jurisdictions, which shall be collected as other taxes, kept in a separate fund and be used exclusively for the purposes contemplated and set forth in this article: Provided, however, that nothing in this section contained shall be held or construed to authorize or allow any city, town or county to levy any tax in excess of the amount now or hereafter limited by any general law or special charter. (1923, c. 158, s. 4; C. S., s. 2776(p).)

§ **160-171. Repeal of inconsistent laws; effect.**—This article shall in no way affect any laws now in force in reference to market house or houses now in existence or the establishment or maintenance of market house or houses in towns of less than five thousand inhabitants under the laws now in force. (1923, c. 158, s. 5; C. S., s. 2776(q).)

ARTICLE 14.

Zoning Regulations.

§ **160-172. Grant of power.**—For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. (1923, c. 250, s. 1; C. S., s. 2776(r).)

Cross References.—As to provision that housing authorities are subject to zoning laws of municipality, see § 157-13. As to power of municipality to abate nuisances, see § 160-55.

Editor's Note.—For an article on the constitutionality of zoning laws, see 5 N. C. L. Rev. 241.

Purpose of Article.—This article is comprehensive; it contains a grant of powers not contained in other acts. For the purpose of promoting health, safety, morals, and the general welfare, the General Assembly delegated the powers prescribed to the legislative body of cities and towns. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Origin and Necessity.—Building zone laws are of modern origin, and began in this country about fifty years ago. With the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, which are now uniformly sustained, a century ago, or even less, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations. While the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted to the application of constitutional principles, statutes and ordinances, which are found clearly not to conform to the Constitution, of course, must fall. Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

"A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities." Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).

Power Delegated.—By this article the General Assembly has delegated to "the legislative body" of cities and incorporated towns the power to adopt zoning regulations and, from time to time, to amend or repeal such regulations. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Validity of Statutes.—Statutes which have been passed authorizing the governing bodies of municipal corporations to enact zoning ordinances prescribing that in certain areas only designated types of buildings may be erected and used have been generally upheld by the courts as an exercise of the police power of the State. Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952); Raleigh v. Morand, 247 N. C. 363, 100 S. E. (2d) 870 (1957).

Building Inspector Must Follow Literal Provisions of Regulations.—In the issuing of building permits the building inspector, a purely administrative agent, must follow the literal provisions of the zoning regulations. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Power to Zone Cannot Be Delegated.—The power to zone is conferred upon the governing body of the municipality and cannot be delegated to the board of adjustment. Hence a board of adjustment has no power either under this section or under ordinance to permit a type of business or building prohibited by the ordinance, for to do so would be an ammendment of the law and not a variance of its regulations. James v. Sutton, 229 N. C. 515, 50 S. E. (2d) 300 (1948); In re O'Neal, 243 N. C. 714, 92 S. E. (2d) 189 (1956).

Variance and Nonconforming Buildings.—The privilege of erecting a nonconforming building or a building for a nonconforming use may not be granted under the guise of a variance permit, and action to that effect is in direct conflict with the general purpose and intent of the ordinance and does violence to its spirit. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Validity of Ordinances.—An ordinance passed under this statute following its provisions and carrying it into effect in the city passing it, prescribing uniform regulations for each zone or district and giving an inspector certain judicial functions with respect to the kind or class of buildings under a board of adjustment and review, and providing for certiorari is a valid exercise of power and not repugnant to the organic law prohibiting discriminations. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

A zoning ordinance limiting the uses of property solely on the basis of race is beyond the scope of police power, since the reserved police power of the State must stop when it encroaches on the protection afforded the citizen by the federal Constitution. Clinard v. Winston-Salem, 217 N. C. 119, 6 S. E. (2d) 867, 126 A. L. R. 634 (1940).

A zoning ordinance covering all land within the municipality and separating commercial and industrial districts of the city from those set apart for residences, schools, parks, libraries, churches, etc., and which is uniform and operates alike on all territory within the respective zones, bears a reasonable relation to the health, safety, morals and general welfare of the entire community and is a valid and constitutional exercise of the delegated police power of the municipality. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

The fact that a lot would be more valuable if devoted to a nonconforming use does not deprive the owner of property without due process of law when the zoning regulations are uniform in their application to all within the respective districts, and the differentiation of the uses of property within the respective districts is in accordance with a comprehensive plan in the interest of the health, safety, morals or general welfare of the entire community. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

As a general rule a zoning ordinance of a municipality is valid and enforceable if it emanates from ample grant of power by the legislature to the city or town, if it has a reasonable tendency to promote the public safety, health, morals, comfort, welfare and prosperity, and if its provisions are not arbitrary, unreasonabe or confiscatory. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

It is not a prerequisite to the validity of a zoning ordinance that the zoning district lines should coincide with property lines. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

A municipal zoning ordinance is confiscatory and invalid in its application to a particular lot if it is practically impossible to use such lot for the purpose permitted by the ordinance so that the ordinance renders such property valueless for practical purposes. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

An ordinance which purports to prohibit

the erection of a gin or mill in the town without the consent of neighboring property owners cannot be upheld under this article Wilcher v. Sharpe, 236 N. C. 308, 72 S. E. (2d) 662 (1952), commented on in 31 N. C. Law Rev. 308.

Zoning Regulations May Be Amended and Changed.—In enacting a zoning ordinance, a municipality is engaged in legislating and not in contracting. As a consequence, a zoning ordinance fixing the boundaries of zones does not result in a contract between the municipality and property owners precluding the municipality from afterwards changing the boundaries if it deems a change to be desirable. Moreover, a zoning ordinance does not vest in a property owner the right that the restrictions imposed by it upon his property or the property of others shall remain unaltered. For these reasons, zoning regulations may be amended or changed when such action is authorized by the enabling statute and does not contravene constitutional limitations on the zoning power. Marren v. Gamble, 237 N. C. 680, 75 S. E. (2d) 880 (1953).

Zoning Beyond Corporate Limits Not Authorized. The provisions of §§ 160-172 through 160-181.1 do not authorize zoning beyond municipal corporate limits. State v. Owen, 242 N. C. 525, 88 S. E. (2d) 832 (1955).

This section contains no provision for judicial review by certiorari or otherwise of the action of the "legislative body" of cities and towns with reference to the enactment, amendment or repeal of zoning regulations. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Storage of Gasoline.—A municipal ordinance prohibiting storage of gasoline within the fire district of the city in tanks with a capacity greater than 4,400 gallons bears sufficient relationship to the public safety to come within the police power of the municipality, at least for purpose of sustaining a finding to that effect upon the hearing of an order to show cause why a temporary order restraining the violation of the ordinance should not be continued to the hearing. Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. 838 (1939).

City May Limit Use of Property in Residential District.—This section authorizes municipalities to enact zoning ordinances prohibiting the use of property within a residential district for business or commercial purposes. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

Ordinance Held Not Discriminatory.—Provisions of a zoning ordinance which permits commercial and industrial activities within a residential district provided such activities are carried on by members of the immediate family and not more than two persons are employed therein, does not render the ordinance void as being discriminatory, since the commercial activities permitted thereunder in a residential district are so intrinsically different from unlimited commercial and industrial activities in general as to permit their separate classification. Kinney v. Sutton, 230 N. C 404, 53 S. E. (2d) 306 (1949).

Applied in Kass v. Hedgpeth, 226 N. C. 405, 38 S. E. (2d) 164 (1946).

Cited in State v. Roberson, 198 N. C. 70, 150 S. E. 674 (1929); Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585 (1938); Ornoff v. Durham, 221 N. C. 457, 20 S. E. (2d) 380 (1942); Chambers v. Zoning Board of Adjustment of Winston-Salem, 250 N. C. 194, 108 S. E. (2d) 211 (1959).

§ 160-173. Districts.—For any or all said purposes it may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1923, c. 250, s. 2; C. S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1.)

Local Modification.—Cleveland, Durham: 1931, c. 176; Forsyth: 1933, c. 7; Guilford: 1931, c 176; Mecklenburg and municipalities therein: 1959, c. 135; Pasquotank: 1933, c. 263; Perquimans: 1931, c. 176; Robeson: 1963, c. 718; Rockingham, Rowan: 1931, c. 176; Union and municipalities therein: 1961, c. 4; Wake: 1945, c. 532; Wayne: 1931, c. 176; Elizabeth City: 1933, c. 263; 1945, c 301; city of Laurinburg: 1953, c. 1256; city of Statesville: 1957, c. 1212; city of Wilson: 1963, c. 663; town of Asheboro: 1947, c. 428; town of Clinton: 1957, c. 304; town of Morehead City: 1957, c. 629; town of Wallace: 1957, c. 891.

Editor's Note.—The 1931 amendment added a proviso, since deleted.

The 1963 amendment deleted the proviso, relating to regulation and redistricting of property at the corners of intersections, added by the 1931 amendment.

Section 4 of the 1963 amendatory act provides that the amendment to this section shall not apply to the counties of Ashe, Chatham, Cumberland, Davidson, Gaston, Iredell, Lee, Macon, Pender, Vance, Warren, Washington and Watauga.

Section 6 of the 1963 amendatory act provides that the act shall become effective on January 15, 1964 but shall not apply to any written application made prior to such date nor to litigation pending on such date.

Nature of Uniformity of Law.—In one part of a district a filling station may be noxious or offensive to the public within the purview of the ordinance, and in another part it may not be; at one place it may menace the public safety and at another it may not. Conditions and probable results must be taken into account. This is the principle on which the board of adjustment has acted; it passes on individual cases, of course; but each case is determined in the contemplation of the statute and the ordinance by a uniform rule. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Application Where Ordinance Invalid.—Under the provisions of this statute, the regulations prescribed shall be uniform for each class or kind of building throughout each district, and the regulations of one district may differ from those of the others, and can have no application to the question of the rights of the governmental body of the city refusing to issue a permit for a gasoline filling station, in denial of the right of an applicant for such license under an invalid ordinance. Bizzell v. Board, 192 N. C. 364, 135 S. E. 58 (1926).

Zoning District Lines Need Not Coincide with Property Lines.—It is not required under this section that zoning district lines coincide with property lines, regardless of the area involved. Penny v. Durham, 249 N. C. 596, 107 S. E (2d) 72 (1959).

For cases discussing former proviso relating to regulation and redistricting of property at the corners of intersections, see Marren v. Gamble, 237 N. C. 680, 75 S. E. (2d) 880 (1953); Robbins v Charlotte, 241 N. C. 197, 84 S. E. (2d) 814 (1954); Bryan v. Sanford, 244 N. C. 30, 92 S. E. (2d) 420 (1956); In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Applied in Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

§ **160-174. Purposes in view.**—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. (1923, c. 250, s. 3; C. S., s. 2776(t).)

Quoted in Walker v. Elkin, 254 N. C. 85, 118 S. E (2d) 1 (1961).

§ **160-175. Method of procedure.**—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in such municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. (1923, c. 250, s. 4; C. S., s. 2776(u); 1927, c. 90.)

Local Modification.—Durham: 1955, c. 172; Granville: 1949, c. 598.

Editor's Note.—Prior to the 1927 amendment the last sentence read, "At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality."

Effect of Noncompliance with Section.—Where original zoning ordinances, which did not include defendant's land within area prohibited for business structures, and amendment thereto which purported to do so, were not adopted in accordance with the enabling provisions of this and the following sections, such ordinances were invalid and ineffective as zoning regulations. Kass v. Hedgpeth, 226 N. C. 405, 38 S E. (2d) 164 (1946), citing Eldridge v. Mangum, 216 N. C. 532, 5 S. E. (2d) 721 (1939); Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946); Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

Ordinance Is Presumed Valid.—When it is shown that a zoning ordinance has been adopted by the governing board of a municipality, there is a presumption in favor of the validity of the ordinance and the burden is upon the complaining property owner to show its invalidity or inapplicability. Helms v Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

Court Will Not Substitute Its Judgment for Legislative Body's.—When the most that can be said against a zoning ordinance is that whether it was unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. In such circumstances the settled rule seems to be that the court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining whether its action is in the interest of the public health, safety, morals or general welfare. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

And Permit for Nonconforming Use Does Not Prevent Enforcement.—The fact that a municipal official issues a permit for a nonconforming use after the enactment of a zoning ordinance does not estop the municipality from enforcing the ordinance. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

Notice and an opportunity to be heard are prerequisite to the validity of a modification of municipal zoning regulations, but notice published in a newspaper of general circulation in the municipality and county advising that changes in the zoning of described property and proposed change in the zoning ordinance of the municipality would be discussed, and inviting all persons interested in the proposed changes to be present is sufficient to sustain a finding that notice of both change in the zoning regulations and in zone lines had been given. Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

The fact that the complainants did not see a notice given by advertisement in a local newspaper cannot affect the validity of the ordinance when everything required by the statute was done before its adoption. It is a matter of almost daily occurrence that rights are affected and the status of relationships is changed upon the giving of similar notice, but no one may successfully contend that acts predicated upon such notice are rendered invalid because persons affected did not see the notice in the newspaper. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

The notice required by this section is sufficient and meets the requirements of due process. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

A municipal planning and zoning commission has no legislative, judicial or quasi-judicial power, and the city council acts in the exercise of its legislative function in determining whether the commission's recommendations in regard to the enactment of zoning ordinances should be followed. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Applied in Marren v. Gamble, 237 N. C. 680, 75 S. E. (2d) 880 (1953).

§ **160-176. Changes.**—Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. (1923, c. 250, s. 5; C. S., s. 2776(v); 1959, c. 434, s. 1.)

Editor's Note.—The 1959 amendment inserted "thereto either" immediately after "adjacent" in the second sentence. It also inserted "or on either side thereof" after the word "thereof" in the second sentence. Section 2 of the amendatory act provides: "It is the purpose and intent of this act to extend the protest provision of G. S. 160-176 to the owners of twenty per cent or more of each of the areas of the lots on either side of and extending one hundred feet from any area included in proposed changes or amendments of municipal zoning ordinances."

This section prevails over a municipal ordinance providing that a change in zoning regulations could be approved by a majority of the city commissioners. Eldridge v. Mangum, 216 N. C. 532, 5 S. E. (2d) 721 (1939).

"Directly Opposite."—Where a zoning ordinance, passed by a majority vote of the city council, rezoned applicant's property lying more than 150 feet from the street, but left the zoning regulations unchanged as to applicant's property abutting the street to a depth of 150 feet therefrom, and owners of more than 20 per cent of the footage on the opposite side of the street from applicant's property had protested the change, the property of those protesting did not lie "directly opposite" the property rezoned within the purview of this section, and therefore it was not required that the zoning ordinance be passed by three-fourths of the members of the city council. Penny v.

Durham, 249 N. C. 596, 107 S. E. (2d) 72 (1959), defining the term "directly opposite."

Sufficient Notice.—Where change of a zoning regulation has been advertised for two successive weeks in a newspaper printed in the municipality, the statutory notice is sufficient. Helms v. Charlotte, 255 N. C. 647, 122 S. E. (2d) 817 (1961).

Applied in Walker v. Elkin, 254 N. C. 85, 118 S. E. (2d) 1 (1961).

§ 160-176.1. Protest petition; form; requirements; time for filing.—No protest against any change or amendment in a zoning ordinance or zoning map shall be valid or effective for the purposes of G. S. 160-176 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the municipal clerk in sufficient time to allow the municipality at least two normal work days, excluding Saturdays, Sundays, and legal holidays, prior to the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The governing body of any municipality may by ordinance require that all protest petitions be on a form prescribed and furnished by the municipality, and such form may prescribe any reasonable information deemed necessary to permit the municipality to determine the sufficiency and accuracy of the petition. (1963, c. 1058, s. 2.)

Editor's Note.—This section is made effective on January 15, 1964 but shall not apply to any written application made prior to such date nor to litigation pending on such date.

§ 160-177. Zoning commission.—In order to avail itself of the powers conferred by this article, such legislative body shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city planning commission already exists, it may be appointed as the zoning commission. (1923, c. 250, s. 6; C. S., s. 2776(w).)

A naval officer holds office under the United States government and therefore under the provision of Art. XIV, § 7, of the State Constitution, he could not hold the office of zoning commissioner, and was neither a de facto nor a de jure commissioner. Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

A municipal planning and zoning commission has no legislative, judicial or quasi-judicial power, and the city council acts in the exercise of its legislative function in determining whether the commission's recommendations in regard to the enactment of zoning ordinances should be followed. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

§ 160-178. Board of adjustment.—Such legislative body may provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years; provided, that such legislative body in the appointment of the original members of such board, or in the filling of vacancies caused by the expiration of the terms of the existing members of any such board, may make appointments of certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. Such legislative body may, in its discretion, appoint not more than two alternate members to serve on such board in the absence, for any cause, of any regular member. Such alternate member or members shall be appointed for the same term or terms as regular members, and shall be appointed in the same manner as regular members and at the regular times for appointment; provided, however, that in the case of the first appointment of alternate members subsequent to March 18, 1947, the appointment shall be for a term which shall expire at the next time when the term of any regular member expires. Such alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. Such board of adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the municipality. Such appeal shall be taken within such time as shall be prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

The chairman of the board of adjustment is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. Any member of the board while temporarily acting as chairman shall have and may exercise like authority. (1923, c. 250, s. 7; C. S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3.)

Local Modification.—City of Wilson: 1961, c. 633; 1963, c. 151; city of Winston-Salem: 1951, c. 157.

Cross Reference.—As to power of board of adjustment to permit nonconforming use, see note to § 160-172.

Editor's Note.—The 1929 amendment added the proviso to the first sentence of this section. The 1947 amendment inserted the second, third and fourth sentences. The 1949 amendment inserted "not more than" in the second sentence. It also substituted "alternate member or" for "two alternate" near the beginning of the third sentence.

The 1963 amendment, effective Jan. 15, 1964, added the last paragraph.

Section 6 of the 1963 amendatory act provided that the act would become effective on January 15, 1964 but would not apply to any written application made prior to such date nor to litigation pending on such date.

The provisions of this section relating to the stay of proceedings thereon seem to be patterned after the general law of appeals. See § 1-294 where many constructions of the language here used will be found in the note.

For article on power of zoning board of

adjustment to grant variances from zoning ordinance, see 29 N. C. Law Rev. 245.

Purpose of Section.—The plain intent and purpose of this section is to permit, through the board of adjustment the amelioration of the rigors of necessarily general zoning regulations by eliminating the necessity for a slavish adherence to the precise letter of the regulations where, in a given case, little or no good on the one side and undue hardship on the other would result from a literal enforcement. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Section Grants No Legislative Power.—This section and § 160-172 do not grant to board of adjustment legislative authority, and therefore, board is without power to amend an ordinance under which it functions. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Nature of Power.—The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power, it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action and to exercise discretion of a judicial nature. These are not mere ministerial duties. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

Within the class of quasi-judicial acts fall the board's conclusions as to whether the proposed building would be noxious or offensive or detrimental to the public safety or welfare by reason of its situation or the surrounding conditions; also in this class is the legal discretion to be exercised by the board upon the conclusions reached. Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

The planning and zoning commission is separate and distinct from the board of adjustment appointed in accordance with this section. The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power, it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action and to exercise discretion of a judicial nature. Even so, it is not a law-making body and may not disregard zoning regulations adopted by the legislative body, to wit, the city council. It can merely vary them to prevent injustice when the strict letter of the provisions would work unnecessary hardship. In re Markham, 259 N. C. 566, 131 S. E. (2d) 329 (1963).

Ordinances in Conflict with Section Are Void.—Municipal ordinances prescribing procedure for the enforcement of zoning regulations in conflict with those prescribed by this section are void, since this section contemplates that enforcement procedure shall be uniform. Mitchell v. Barfield, 232 N. C. 325, 59 S. E. (2d) 810 (1950).

Board Cannot Permit Nonconforming Use or Structure.—Board of adjustment cannot permit type of business or building prohibited by zoning ordinance, for to do so would be an amendment of law and not a variance of its regulations. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

But Can Merely "Vary" Regulations.—The board of adjustment cannot disregard the provisions of this article or regulations enacted in accordance with zoning law, but can merely "vary" them to prevent injustice when the strict letter of the provisions would work "unnecessary hardship." Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Board's Findings May Not Be Based on Unsworn Statements.—Absent stipulations or waiver, a board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Where one asserts a legal right to a nonconforming use, whether he has such legal right depends upon factual findings, and in the determination of such factual findings unsworn statements may not be considered either competent or substantial. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Who May Appeal from Order.—Any owner whose property is affected has the right to apply to the courts for review of on order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Adequacy of Scope of Review.—While this section provides expressly for a review "by proceedings in the nature of certiorari," this is an "adequate procedure for judicial review" (within the meaning of § 143-307) only if the scope of review is equal to that under § 143-306 et seq. Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Extent of Review.—Quasi-judicial functions, when exercised, not arbitrarily, but in subordination to a uniform rule prescribed by statute, ordinarily are not subject to judicial control. It is only in extreme cases, those which are arbitrary, oppressive, or attended with manifest abuse, that the courts will interfere. In Rosenthal v. Goldsboro, 149 N. C. 128, 62 S. E. 905 (1908), it is said: "It may now be considered as established with us, that our courts will always be most reluctant to interfere with these municipal governments in the exercise of discretionary powers, conferred upon them for the public weal, and will never do so unless their action should be so clearly unreasonable as to amount to an oppressive and manifest abuse of their discretion. This position is, we think, supported by the better reason, and is in accord with the decided weight of authority." Harden v. Raleigh, 192 N. C. 395, 135 S. E. 151 (1926).

The decisions of the board of adjustment are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive, or attended with manifest abuse of authority. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Optionee.—Since an optionee has no present right to erect a building on the land, the withholding of a building permit from him cannot in law impose an "undue and unnecessary hardship" upon him as a predicate for relief from an order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

"Unnecessary hardship" as used in this section, does not mean a pecuniary loss to a single owner in being denied a building permit for a nonconforming structure pursuant to zoning regulations binding upon all alike. Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946).

Where Action of Board Does Not Constitute Res Judicata upon Second Application.—The approval by the board of adjustment of a denial of a permit to erect a filling station on certain land does not constitute res judicata upon a second application made therefor three years after the first application upon substantial change of the traffic conditions. In re Application of Broughton Estate, 210 N. C. 62, 185 S. E. 434 (1936).

Review of Questions of Fact.—The writ of certiorari, as permitted by this section, is a writ to bring the matter before the court, upon the evidence presented by the record itself, for review of alleged errors of law. It does not lie to review questions of fact to be determined by evidence outside the record. In re Pine Hill Cemeteries, 219 N. C. 735, 15 S. E. (2d) 1 (1941). See Lee v. Board of Adjustment, 226 N. C. 107, 37 S. E. (2d) 128 (1946); Jarrell v. Board of Adjustment for High Point, 258 N. C. 476, 128 S. E. (2d) 879 (1963).

Cited in State v. Roberson, 198 N. C. 70, 150 S. E. 674 (1929); Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

§ **160-179. Remedies.**—In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. (1923, c. 250, s. 8; C. S., s. 2776(y).)

Editor's Note.—See 13 N. C. Law Rev. 235.

This section expressly authorizes the use of the injunctive power of the court to enjoin violations of zoning ordinances. Raleigh v. Morand, 247 N. C. 363, 100 S. E. (2d) 870 (1957); New Bern v. Walker, 255 N. C. 355, 121 S. E. (2d) 544 (1961).

This section confers jurisdiction beyond the scope of the ordinary equity jurisdiction in enjoining the creation of a nuisance and provides a statutory injunction to prevent the violation of municipal ordinances enacted in the exercise of the police power. Fayetteville v. Spur Distributing Co., 216 N. C. 596, 5 S. E. (2d) 838 (1939). For note on this case, see 18 N. C. Law Rev. 255.

This section enlarges the scope of the ordinary equity jurisdiction, and provides a statutory injunction to be applied to acts and conditions ordinarily considered as being beyond equity interference. New Bern v. Walker, 255 N. C. 355, 121 S. E. (2d) 544 (1961).

Section Applies Only to Regulations Promulgated under Article.—The equitable remedy of injunction authorized applies only to the enforcement of zoning regulations promulgated under this article. Clinton v. Ross, 226 N. C. 682, 40 S. E. (2d) 593 (1946).

An ordinance prohibiting the operation of tobacco sales warehouses in certain sections of a municipality cannot be enforced by injunction under this section as to a warehouse in operation prior to the adoption of zoning regulations by the municipality even if the ordinance be deemed a part of the later adopted zoning regulations where zoning ordinance expressly excludes from its operation nonconforming uses existing prior to its adoption. Clinton v. Ross, 226 N. C. 682, 40 S. E. (2d) 593 (1946).

A municipal corporation was held not to be estopped from enforcing a valid zoning regulation by obtaining an injunction under this section because of the conduct of its officials in permitting or even encouraging its violation by issuing a permit for a permissive use with knowledge that the owner intended to use it for a prohibited purpose or by acquiescing in such unlawful use over a period of years. Raleigh v. Fisher, 232 N. C. 629, 61 S. E. (2d) 897 (1950).

Cited in Mitchell v. Barfield, 232 N. C. 325, 59 S. E. (2d) 810 (1950); North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ **160-180. Conflict with other laws.**—Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern. (1923, c. 250, s. 9; C. S., s. 2776(z).)

§ **160-181. Other statutes not repealed.**—This article shall not have the effect of repealing any zoning act or city planning act, local or general, now in force, except as to such provisions thereof as are repugnant to or inconsistent herewith; but it shall be construed to be in enlargement of the duties, powers and authority contained in such statutes and all other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the State of North Carolina. (1923, c. 250, s. 11; C. S., s. 2776(aa).)

§ **160-181.1. Article applicable to buildings constructed by State and its subdivisions.**—All of the provisions of this article are hereby made applicable to the erection and construction of buildings by the State of North Carolina and its political subdivisions. (1951, c. 1203, s. 1.)

Stated in McKinney v. High Point, 237 N. C. 66, 74 S. E. (2d) 440 (1953).

§ **160-181.2. Extraterritorial jurisdiction.**—The legislative body of any municipality whose population at the time of the latest decennial census of the United States was one thousand two hundred fifty (1,250) or more, may exercise the powers granted in this article not only within its corporate limits but also within the territory extending for a distance of one mile beyond such limits in all directions; provided, that any ordinance intended to have application beyond the corporate limits of the municipality shall expressly so provide, and provided further that such ordinance be adopted in accordance with the provisions set forth herein. In the event of land lying outside a municipality and lying within a distance of one mile or more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. No extraterritorial regulations shall affect bona fide farms, but any use of such property for non-farm purposes shall be subject to such regulations.

As a prerequisite to the exercise of such powers, the membership of the zoning commission or planning board charged with the preparation of proposed regulations for the one-mile area outside of the corporate limits shall be increased to include additional members who shall represent such outside area. The number of additional members representing such outside area shall be equal in number to the members of the planning board or zoning commission, appointed by the governing body of the municipality. Such additional members shall be residents of the one-mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the municipality is situated. Such members shall have equal rights, privileges, and duties with the other members of the zoning commission or planning board in all matters pertaining to the regulation of such area, both in preparation of the original regulations and in consideration of any proposed amendments to such regulations.

In the event that a municipal legislative body adopts zoning regulations for the area outside its corporate limits, it shall increase the membership of the board of adjustment by adding five additional members. Such members shall be residents of the one-mile area outside the corporate limits and shall be appointed by the board of county commissioners of the county wherein the municipality is situated. Such members shall have equal rights, privileges, and duties with the other members of the board of adjustment in all matters pertaining to the regulation of such area. The concurring vote of eight members of such enlarged board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance.

In the event the board of county commissioners fails to make the appointments provided for in this section within ninety (90) days after receipt of a resolution from a municipal governing body requesting that such appointments be made, the municipal governing body may thereupon make such appointments.

Where the extraterritorial jurisdiction of a municipality extends into more than one county, the board of county commissioners of each county affected shall appoint the outside members of the zoning commission or planning board and of the board of adjustment, from among the residents of the area included in its county; such outside members shall function only with respect to the area included in the county in which they reside.

The additional members appointed to the zoning commission or planning board and the board of adjustment as provided for herein may be appointed to serve for terms corresponding to the terms of present members or for such other terms as the governing body of the municipality may, by ordinance, determine.

Any municipal legislative body exercising the powers granted by this section may provide for the enforcement of its regulations for the outside area in the same manner as the regulations for the area inside the city are enforced; provided this section shall not apply to Caldwell, Cumberland, Davie, Franklin, Gaston, Iredell, Macon, Mitchell, Moore, Onslow, Orange, Pender, Person, Richmond, Tyrrell, Warren, Washington and Wayne counties. The requirement that a municipality shall have a population of twelve hundred and fifty (1250) or more shall not apply to Montgomery County, or to the town of Aurora in Beaufort County. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1; 1¾; c. 1217; 1963, cc. 519, 889, 1076, 1105.)

Local Modification.—Vance (as to fourth paragraph): 1961, c. 548, s. 1½; town of Red Springs: 1963, c. 21.

Editor's Note.—The first 1961 amendment deleted "Vance" from the list of counties in the last paragraph.

The second 1961 amendment substituted "one thousand two hundred fifty (1,250)" for "two thousand five hundred (2,500)" in the first paragraph. It also inserted paragraphs four and six, deleted Watauga from the list of counties in the last paragraph and struck out the former last sentence relating to Montgomery County. The third 1961 amendment added the present last sentence relating to such county.

The first 1963 amendment added at the end of the section the reference to the town of Aurora in Beaufort County.

The second 1963 amendment inserted "Caldwell" in the list of counties in the last paragraph, the third 1963 amendment deleted "Harnett" and the fourth 1963 amendment inserted "Richmond" in the list.

Determination of questions of fact by the board of adjustment will not be disturbed when its findings are supported by evidence and are made in good faith. Application of Hasting, 252 N. C. 327, 113 S. E. (2d) 433 (1960).

Article 14A.

Preservation of Open Spaces and Areas.

§ 160-181.3. Legislative intent.—It is the intent of the General Assembly in enacting this article to provide a means whereby any county or municipality may acquire, by purchase, gift, grant, bequest, devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment. (1963, c. 1129, s. 1.)

§ 160-181.4. Finding of necessity.—The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or esthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physical, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any county or municipality to expend or advance public funds for, or to accept by, purchase, gift, grant, bequest, devise, lease, or otherwise, of the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective zoning jurisdiction.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced. (1963, c. 1129, s. 2.)

§ **160-181.5. Counties or municipalities authorized to acquire and reconvey real property.**—Any county or municipality in the State may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective zoning jurisdiction, where it finds such acquisition necessary to achieve the purposes of this article. Any county or municipality may also acquire the fee to any such property for the purpose of conveying or leasing said property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property in accordance with the purposes of this article; provided, that where such action is taken, the property may be conveyed back to its original owner but to no other person by private sale. (1963, c. 1129, s. 3.)

§ **160-181.6. Joint action by governing bodies.**—Any county or municipal governing body may enter into any agreement with any other county or municipal governing body or bodies for the purpose of jointly exercising the authority granted by this article. (1963, c. 1129, s. 4.)

§ **160-181.7. Powers of governing bodies.**—Any county or municipal governing body, in order to exercise the authority granted by this article, may:

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which said government or agencies grant financial or other assistance to the county or municipality,
(2) Accept such assistance or funds as may be granted by the State or federal government with or without such a contract,
(3) Agree to and comply with any reasonable conditions which are imposed upon such grants,
(4) Make expenditures from any funds so granted. (1963, c. 1129, s. 5.)

§ **160-181.8. Appropriations and taxes authorized; special tax elections.**—For the purposes set forth in this article, any county or municipal governing body may appropriate any surplus or nontax funds, and in addition may make appropriations and levy annually taxes for the payment of the same as a special purpose, in addition to any allowed by the Constitution. Provided, that no tax shall be levied for the purposes of this article unless it shall have first been approved by the qualified voters of the county or municipality in a special election called by the governing body for such purpose. (1963, c. 1129, s. 6.)

§ **160-181.9. Definitions.**—For the purposes of this article an "open space" or "open area" is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources. (1963, c. 1129, s. 7.)

§ 160-181.10. Certain counties excepted from article.—This article shall not apply to Alamance County, Columbus County, Craven County, Duplin County, Forsyth County, Gates County, Hoke County, Nash County, Pender County, Rockingham County and Warren County. (1963, c. 1129, s. 7½.)

Article 15.

Repair, Closing and Demolition of Unfit Dwellings.

§ 160-182. Exercise of police power authorized.—It is hereby found and declared that the existence and occupation of dwellings in municipalities of this State which are unfit for human habitation are inimical to the welfare, and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenevery any municipality of this State finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality, power is hereby conferred upon such municipality to exercise its police powers to repair, close or demolish the aforesaid dwellings in the manner herein provided. (1939, c. 287, s. 1.)

Cross References.—See § 160-200, subdivision (28). As to condemnation of buildings dangerous to life in case of fire, see § 160-151.

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 367.

§ 160-183. Definitions.—The following terms whenever used or referred to in this article shall have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

(1) "Dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

(2) "Governing body" shall mean the council, board of commissioners, board of aldermen, or other legislative body, charged with governing a municipality.

(3) "Municipality" shall mean any incorporated city or town.

(4) "Owner" shall mean the holder of the title in fee simple and every mortgagee of record.

(5) "Parties in interest" shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(6) "Public authority" shall mean any housing authority or any officer who is in charge of any department or branch of the government of the municipality, county or State relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(7) "Public officer" shall mean the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinance and by this article. (1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1.)

Local Modification.—Gaston: 1961, c. 398, s. 2a; town of Maysville; as to subsection (a): 1955, c. 309; town of Raeford, as to subsection (a): 1955, c. 723; town of Whiteville: 1959, c. 784.

Editor's Note.—The 1961 amendment rewrote subdivision (3) as amended in 1953 and 1941.

Section 2 of the 1961 amendatory act provides that it is the purpose and intent of the act to make the authority granted by this article applicable to all incorporated cities and towns in North Carolina.

§ 160-184. Ordinance authorized as to repair, closing and demolition; order of public officer.—Upon the adoption of an ordinance finding that dwelling conditions of the character described in § 160-182 exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located therein fixed not less than ten days nor more than thirty days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished: Provided, however, that the duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance.

(6) That, the amount of the cost of such repairs, alterations or improvements,

or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of such dwellings and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court: Provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1939, c. 287, s. 3.)

§ **160-185. Standards.**—An ordinance adopted by a municipality under this article shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality; such conditions may include the following (without limiting the generality of the foregoing): Defects therein increasing the hazards of fire, accident, or other calamities, lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. Such ordinance may provide additional standards to guide the public officer, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4.)

§ **160-186. Service of complaints and orders.**—Complaints or orders issued by a public officer pursuant to an ordinance adopted under this article shall be served upon persons either personally or by registered mail; but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two successive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the dwelling is located and such filing of the complaint shall have the same force and effect as other lis pendens notices provided by law. (1939, c. 287, s. 5.)

§ **160-187. Remedies.**—Any person affected by an order issued by the public officer may petition to the superior court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause: Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall present such petition to the court. Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require: Provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this section. (1939, c. 287, s. 6; 1939, c. 386.)

§ **160-188. Compensation to owners of condemned property.**—Nothing in this article shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State. (1939, c. 386; 1943, c. 196.)

Editor's Note.—The 1943 amendment rewrote this section and added the reference to police power.

§ **160-189. Additional powers of public officer.**—An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

(1) To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitations;
(2) To administer oaths, affirmations, examine witnesses and receive evidence;
(3) To enter upon premises for the purpose of making examinations: Provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
(4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and
(5) To delegate any of his functions and powers under the ordinance to such officers and agents as he may designate. (1939, c. 287, s. 7.)

§ **160-190. Administration of ordinance.**—The governing body of any municipality adopting an ordinance under this article shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in such municipality for the purpose of determining the fitness of such dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this article; and any such municipality is authorized to make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances. (1939, c. 287, s. 8.)

§ **160-191. Supplemental nature of article.**—Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9.)

ARTICLE 15A.

Liability for Negligent Operation of Motor Vehicles.

§ **160-191.1. Municipality empowered to waive governmental immunity.**—The governing body of any incorporated city or town, by securing liability insurance as hereinafter provided, is hereby authorized and empowered, but not required, to waive its governmental immunity from liability for any damage by reason of death, or injury to person or property, proximately caused by the negligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Such immunity is waived only to the extent of the amount of the insurance so obtained. Such immunity shall be deemed to have been waived in the absence of affirmative action by such governing body. (1951, c. 1015, s. 1.)

Cross Reference.—For further provisions as to financing parking facilities, see §§ 160-497 through 160-507.

Editor's Note.—For brief comment on this article, see 29 N. C. Law Rev. 421.

Immunity Not Waived without Purchase of Insurance.—In the operation of a chemical fogging machine on a street or highway for the purpose of destroying insects, a municipality acts in a governmental capacity in the interest of the public health, and it may not be held liable in tort for injuries resulting therefrom unless it waives its immunity by procuring liability insurance, even though the operation of the machine renders a street or highway hazardous to traffic, since the exception to governmental immunity in failing to keep its streets in a reasonably safe condition relates solely to the maintenance and repair of its streets. Clark v. Scheld, 253 N. C. 732, 117 S. E. (2d) 838 (1961).

Municipal Corporation Cannot Avoid Liability under This Article.—If a municipal corporation, having secured liability insurance, injured plaintiff by actionable negligence in the operation of its truck and fogging machine in exercising its legal right to destroy mosquitoes, it cannot completely avoid liability to him by reason of the provisions of this article. Moore v. Plymouth, 249 N. C. 423, 106 S. E. (2d) 695 (1959).

§ **160-191.2. Contract of insurance; payment of premiums.**—The contract of insurance purchased pursuant to this article must be one issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State, and must by its terms adequately insure such city or town against any and all liability for any damage by reason of death, or injury to person or property, proximately caused by the negligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Any company or corporation which enters into a contract of insurance as above described with an incorporated city or town, by such act, waives any defense based upon the governmental immunity of the incorporated city or town from liability.

Every incorporated city and town is authorized and empowered to pay, as a necessary expense, the lawful premiums for such insurance out of the general tax revenues or other appropriate funds of such incorporated city or town. (1951, c. 1015, s. 2.)

§ **160-191.3. Action for negligence in performance of governmental, etc., function authorized; other defenses not affected.**—Any person sustaining damage, or in case of death, his personal representative, may sue an incorporated city or town insured as provided by this article for the recovery of such damages in any court of competent jurisdiction in this State, in the county where such city or town is located; and it shall be no defense to any such action that the operation of such motor vehicle by such officer, agent or employee, was in pursuance of a governmental, municipal, or discretionary function of said city or town if, and to the extent, such city or town has insurance coverage as provided by this article.

Except as hereinbefore expressly provided, nothing in this article shall be construed to deprive any city or town of any defense whatsoever to any such action for damages, or to restrict, limit or otherwise affect any such defense, which said city or town may have at common law or by virtue of any statute (whether general, special, private or local) ; and nothing in this article shall be construed to relieve any person sustaining damages, or any personal representative of any decedent, from any duty to give notice of such claim to the incorporated city or town, or to commence any civil action for the recovery of damages, within the applicable period of time prescribed or limited by statute. (1951, c. 1015, s. 3.)

§ **160-191.4. Municipality liable only upon claims arising after procurement of insurance.**—An incorporated city or town may incur liability pursuant to this article only with respect to a claim arising after such city or town has procured liability insurance pursuant to this article and during the time when such insurance is in force. (1951, c. 1015, s. 4.)

§ **160-191.5. Knowledge of insurance to be kept from jury.**—No part of the pleadings which relate to or alleges facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this article. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall ask for a jury trial thereon.

No plaintiff to an action brought pursuant to this article nor counsel, nor witness therefor, shall make any statement, ask any question, read any pleadings or do any other act in the presence of the trial jury in such case so as to indicate to any member of the jury that the defendant's liability would be covered by insurance, and if such is done order shall be entered of mistrial. (1951, c. 1015, s. 5.)

ARTICLE 15B.

Joint Water Supply Facilities.

§ 160-191.6. Acquisition and operation authorized.—Any two or more municipalities in the State of North Carolina are hereby authorized to acquire lands and water rights along any stream, to the extent deemed by them necessary or convenient, for the purpose of constructing a dam or dams to impound the waters of such stream in a reservoir or reservoirs, and to construct dams and water storage reservoirs, and to maintain, improve and operate the same, jointly, either within or without the corporate limits of such municipalities or either of them, and further to acquire, construct, improve, maintain and operate intakes, mains, and all other facilities and property, deemed by such municipalities to be necessary and convenient for the purpose of furnishing water from such reservoirs to such municipalities and the inhabitants thereof, and to appropriate money therefor. (1955, c. 1201, s. 1.)

Cross Reference.—As to water and sewer authorities, see § 162A-1 et seq.

§ 160-191.7. Contracts and agreements.—Such municipalities may enter into such contracts or agreements, with each other or with other parties, as the governing bodies thereof shall deem appropriate with reference to the joint acquisition, construction, improvement, maintenance and operation of such water supply facilities, the apportionment of the cost thereof, and the division and withdrawal of water supplied or made available by such water supply facilities. (1955, c. 1201, s. 2.)

§ 160-191.8. Authority to issue bonds.—Any municipality determining to acquire, construct or improve any water supply facilities jointly with any other municipality or municipalities under the authority of this article is hereby granted the same authority to issue bonds for such acquisition, construction or improvement as is now given to any municipality under the General Laws of North Carolina. (1955, c. 1201, s. 3.)

§ 160-191.9. Article regarded as supplemental.—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local. (1955, c. 1201, s. 4.)

§ 160-191.10. Inconsistent laws inapplicable to article.—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1955, c. 1201, s. 5.)

ARTICLE 15C.

Rescue Squads.

§ 160-191.11. Cities and counties authorized to expend funds for rescue squads.—The governing body of any county or incorporated city or town is hereby authorized to expend, in its discretion, either singularly or jointly, such funds as may be reasonably necessary to purchase and maintain rescue equipment and to finance the operation of a rescue squad or team in order to furnish assistance, either within or outside the boundaries of such county or such city or town respectively, in case of accident or other casualty or when circumstances reasonably require the services of a rescue squad or team. (1959, c. 989.)

SUBCHAPTER II. MUNICIPAL CORPORATION ACT OF 1917.

ARTICLE 16.

Operation of Subchapter.

§ **160-192. Explanation of terms.**—The following words and phrases as used in this subchapter shall, unless a contrary intention clearly appears, have the following meanings, respectively:

The word "city" shall mean any city, town, or incorporated village.

The words "officer" and "officers," when used without further qualification or description, shall mean any person or persons holding any office in the city or in charge of any department or division of the city. The said words when used in contrast with a board or members of a board, or with division heads, shall mean any of the persons in sole charge of a department of the city.

The word "ordinance" shall mean an order of the governing body entitled "ordinance," and designed for the regulation of any matter within the jurisdiction of the governing body as laid down in this subchapter.

The phrase "qualified voter" shall mean any registered qualified voter.

The phrase "regular municipal election" shall mean the biennial election of municipal officers for which provision is made in this subchapter. (1917, c. 136, sub-ch. 15, s. 1; C. S., s. 2777.)

§ **160-193. Effect upon prior laws.**—Nothing in this subchapter shall operate to repeal any local or special act of the General Assembly of North Carolina relating to cities, towns, and incorporated villages, but all such acts shall continue in full force and effect and in concurrence herewith, unless hereafter repealed or amended in manner provided for in this subchapter. The provisions of this subchapter shall not be construed to repeal the provisions as to cities and towns contained in subchapter I of this chapter, except in case they are inconsistent with this subchapter. The provisions of this subchapter, so far as they are the same as those of existing general laws, are intended as a continuation of said laws and not as new enactments, and so far as they give general powers to cities are supplementary to and additional to the special charters of cities which have not such powers, unless inconsistent with or repugnant thereto, and a repetition of such powers if already possessed by cities by virtue of special charters. The provisions of this subchapter shall not affect any act heretofore done, liability incurred, or right accrued or vested, or affect any suit or prosecution now pending or to be instituted to enforce any right or penalty or punish any offense. Subject to the foregoing provisions hereof, all laws or parts of laws in conflict with this subchapter are hereby to the extent of such conflict repealed. (1917, c. 136, sub-ch. 1, s. 1; C. S., s. 2778.)

Effect upon Existing Charters.—In case of a conflict between this subchapter and a city charter the charter must prevail as this subchapter is intended only to add to already existing powers, and not to repeal them. Clinton v. Johnson, 174 N. C. 286, 93 S. E. 776 (1917); Kendall v. Stafford, 178 N. C. 461, 101 S. E. 15 (1919).

§ **160-194. Not to repeal Municipal Finance Act.**—Nothing in this subchapter contained shall be construed to amend or repeal any provisions of the "Municipal Finance Act," and wherever this subchapter and the "Municipal Finance Act" conflict, the "Municipal Finance Act" shall control. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S., s. 2916.)

Article 17.

Organization under the Subchapter.

§ 160-195. Municipal Board of Control; changing name of municipality.—The Municipal Board of Control shall be composed of the Secretary of State, the Attorney General, and the chairman of the Utilities Commission. The Attorney General shall be chairman and the Secretary of State shall be secretary of such Board. The said Municipal Board of Control shall have power and privilege of changing the name of any said town or municipal corporation within the bounds of the State of North Carolina; and the procedure for changing the name of any municipal corporation shall be the same as prescribed by §§ 160-197 and 160-198. (1917, c. 136, sub-ch. 2, s. 4; C. S., s. 2779; 1935, c. 440; 1941, c. 97.)

Editor's Note.—The 1935 amendment substituted "Public Utilities Commissioner" for "chairman of the Corporation Commission." (The officer is now the "chairman of the Utilities Commission.")

It also added the last sentence relative to changing the name of a municipality.

Restraining Execution of Order Changing Name.—Where the complaint contains no allegation that the Board of Municipal Control has failed to observe and follow the requirements of the statutes and no allegation that the Board has acted capriciously or in bad faith, in a civil action to restrain the execution of an order changing the name of a town, demurrer to the complaint for failure to state a cause of action was properly sustained, and there was no error in the court's dissolving a restraining order theretofore granted and dismissing the action. Hunsucker v. Winborne, 223 N. C. 650, 27 S. E. (2d) 817 (1943).

Cited in Burnsville v. Boone, 231 N. C. 577, 58 S. E. (2d) 351 (1950).

§ 160-196. Number of persons and area included.—Any number of persons, not less than fifty, at least twenty-five of whom shall be freeholders or homesteaders, and twenty-five qualified voters living in the area proposed to be incorporated, which area shall have an assessed valuation of real property of at least twenty-five thousand dollars according to the last preceding assessment for taxes, and shall not be a part of nor within three miles of the area included in the limits of any city, town, or incorporated village already or hereafter existing, may be organized into a town upon compliance with the method herein set forth. (1917, c. 136, sub-ch. 2, s. 1; C. S., s. 2780; 1961, c. 269.)

Editor's Note.—The 1961 amendment inserted "nor within three miles of" near the end of the section.

An act of the legislature expressly validating and confirming a municipality as established cures all objections under this section. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649 (1932).

§ 160-197. Petition filed.—(a) What Petition Must Show.—A petition signed by a majority of the resident qualified electors and a majority of the resident freeholders or homesteaders of the territory proposed to be so organized shall be presented to the Secretary of State of North Carolina, accurately describing such territory, with map attached, containing the names of all qualified voters therein, the assessed valuation of such territory, and the proposed name of the new town. The petition shall further be signed by at least twenty-five resident freeholders or homesteaders of the age of twenty-one years or over, at least twenty of whom are qualified voters; and further, the petition shall show the valuation of the real property of the proposed town to be at least twenty-five thousand dollars, according to the last preceding tax assessment; and the petition shall be verified by at least three of the signers who are qualified voters.

(b) Order and Notice for Hearing.—The Secretary of State shall thereupon make an order prescribing the time and place for the hearing of said petition before the Municipal Board of Control. At least thirty days before the hearing, notice of such hearing shall be published once a week for four weeks in a newspaper published in the county where such territory is situate, designated as most likely to give notice to the people of the territory proposed to be so organized or incorporated into a town; or, if no newspaper is so published, then in some newspaper of general circulation in such proposed city, town, or incorporated village; and such notice shall also be posted at the county courthouse door of such county for a like period. Such notice shall be signed by at least three of the freeholders signing the petition for the organization of the town. (1917, c. 136, sub-ch. 2, s. 2; C. S., s. 2781.)

Determining Compliance with Statutory Requirements.—Upon the hearing by the Board of Municipal Control of a petition to change the name of a town, the Board has power to investigate and determine whether or not the requirements of this and the following section have been complied with. Hunsucker v. Winborne, 223 N. C. 650, 27 S. E. (2d) 817 (1943).

§ **160-198. Hearing of petition and order made.**—(a) Manner of Hearing.—Any qualified voter or taxpayer of such territory proposed to be incorporated into a town may appear at the hearing of such petition, and the matter shall be tried as an issue of fact by the Municipal Board of Control, and no formal answer to the petition need be filed. The Board may adjourn the hearing from time to time, in its discretion.

(b) Order Creating Corporation.—The Municipal Board of Control shall file its findings of fact at the close of such hearing, and if it shall appear that the allegations of the petition are true, and that all the requirements in this article have been substantially complied with, the Board shall enter an order creating such territory into a town, giving it the name proposed in the petition.

(c) Election of Officers Provided for.—The Board of Control shall provide for the place of holding the first election for mayor and commissioners; and shall designate how many commissioners shall serve, as set forth in subchapter I of this chapter, naming the number of commissioners, not less than three nor more than seven. The election of mayor and commissioners shall be under the same laws as now govern the election of mayor and commissioners in subchapter I of this chapter. The Board of Control shall appoint a registrar and two judges of election to hold the first election for mayor and commissioners and make such order as may be deemed proper and necessary for the holding of said first election and the certification of persons elected as mayor and commissioners. The list of the names of qualified voters attached to the petition shall be treated as the registration of qualified voters for said election, but the Board may provide for the registration of any other qualified voters in the territory on or before the day of election.

(d) Filing Papers; Fees.—All the papers in reference to the organization of any town under this article shall be filed and recorded in the office of the Secretary of State, and certified copies thereof shall be filed and recorded in the office of the clerk of the superior court of the county in which the town organized is situated. The fees shall be the same as are now provided for the organization of private corporations and shall be paid out of the treasury of the city, town, or incorporated village.

(e) When Organization Complete.—Upon the approval of the Board of Control and the recording of the papers in the offices above mentioned, the said town shall become a municipal corporation with all the powers and subject to all the laws governing towns as set forth in subchapter I of this chapter and as in this subchapter set forth. (1917, c. 136, sub-ch. 2, s. 3; C. S., s. 2782; 1949, c. 1083.)

(f) The incorporation of municipal corporations by the Municipal Board of Control, under article 17 of chapter 160 of the General Statutes of North Carolina, which have occurred prior to the enactment of this subsection are hereby in all respects validated, confirmed and declared to be in all respects municipal corporations, and all acts and things done by the duly elected officers of such municipal corporation in the performance of their official duties in accordance with the existing laws are hereby validated and confirmed. (1917, c. 136, sub-ch. 2, s. 3; C. S., s. 2782; 1949, c. 1083; 1953, c. 1032.)

Cross Reference.—See note to § 160-197.

Editor's Note.—The 1949 amendment added the last two sentences of subsection (c).

The 1953 amendment struck out "and that the organization of such city, town, or incorporated village will better subserve the interests of said persons and the public" formerly appearing immediately following "complied with" in subsection (b). It also added subsection (f).

ARTICLE 18.

Powers of Municipal Corporations.

Part 1. General Powers Enumerated.

§ **160-199. Powers applicable to all cities and towns.**—All the provisions of this article, conferring powers upon cities and towns, shall apply to all cities and towns, whether they have adopted a plan of government under this subchapter or not. And the powers herein granted are in addition to and not in substitution for existing powers of cities and towns. (1919, c. 296; C. S., s. 2786.)

Cited in Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

§ **160-200. Corporate powers.**—In addition to and co-ordinate with the power granted to cities in subchapter I of this chapter, and any acts affecting such cities, all cities shall have the following powers:

(1) To acquire property in fee simple or a lesser interest or estate therein by purchase, gift, devise, bequest, appropriation, lease, or lease with privilege to purchase.

(2) To sell, lease, hold, manage, and control such property and make all rules and regulations by ordinance or resolution which may be required to carry out fully the provisions of any conveyance, deed, or will in relation to any gift or bequest, or the provisions of any lease by which the city may acquire property.

(3) To purchase, conduct, own, lease, and acquire public utilities.

Cross Reference.—See § 160-282 et seq.

(4) To appropriate the money of the city for all lawful purposes.

(5) To create, provide for, construct, regulate, and maintain all things in the nature of public works, buildings, and improvements, including public libraries and equipment for the same.

(6) To supervise, regulate, or suppress, in the interest of public morals, public recreations, amusements and entertainments, and to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the people, and all nuisances and causes thereof.

(7) To pass such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.

(8) To provide for the destruction of noxious weeds, and for payment of the expense thereof by assessment or otherwise.

(9) To regulate the erection of fences, billboards, signs, and other structures, and provide for the removal or repair of insecure billboards, signs, and other structures.

(10) To make and enforce local police, sanitary, and other regulations.

(11) To open new streets, change, widen, extend, and close any street or alley that is now or may hereafter be opened, to purchase any land that may be necessary for the closing of such street or alley, and adopt such ordinances for the regulation and use of the streets, squares, and parks, and

other public property belonging to the city, as it may deem best for the public welfare of the citizens of the city.

To adopt ordinances permitting the owners of property abutting on any public alley that is now or may hereafter be opened, to erect a loading and unloading platform or structure in such alleyway; provided, that such platform or structure, as determined by the governing body of the municipality, shall not unduly obstruct the use of the alleyway by the public. The governing body may, in its discretion, issue and revoke permits for the erection of such platform or structure and upon revocation, the obstruction shall be immediately removed from the alleyway by the owner thereof. The provisions of this paragraph shall not apply to alleyways located in areas zoned for residential purposes.

(12) To acquire, lay out, establish, and regulate parks within or without the corporate limits of the city for the use of the inhabitants of the same.

Cross Reference.—See § 160-155 et seq.

(13) To erect, repair, and alter all public buildings.

(14) To regulate, restrain, and prohibit the running or going at large of horses, mules, cattle, sheep, swine, goats, chickens, and all other animals and fowl of whatsoever description, and to authorize the distraining and impounding and sale of the same for the costs of the proceedings and the penalty incurred and to order their destruction when they cannot be sold, and to impose penalties on the owners or keepers thereof for the violation of any ordinance or regulation of said governing body, and to prevent, regulate, and control the driving of cattle, horses, and all other animals into or through the streets of the city.

(15) To regulate and control plumbers and plumbing work, and to enforce efficiency in the same by examination of such plumbers and inspection of such plumbing work.

(16) To regulate, control, and prohibit the keeping and management of houses or any building for the storage of gunpowder and other combustible, explosive, or dangerous materials within the city, and to regulate the keeping and conveying of the same, and to authorize and regulate the laying of pipes and the location and construction of houses, tanks, reservoirs, and pumping stations for the storage of oil and gas.

(17) To regulate, control, restrict, and prohibit the use and explosion of dynamite, firecrackers, or other explosives or fireworks of any and every kind, whether included in the above enumeration or not, and the sale of same, and all noises, amusements, or other practices or performances tending to annoy or frighten persons or teams, and the collection of persons on the streets or sidewalks or other public places in the city, whether for purposes of amusement, business, curiosity, or otherwise.

(18) To direct, control, and prohibit the laying of railroad and street railway tracks, turnouts, and switches in the streets, avenues, and alleys of the city unless the same shall have been authorized by ordinance, and to require that all railroads, street railways, turnouts and switches shall be so constructed as not to interfere with the drainage of the city and with the ordinary travel and use of the streets, avenues, and alleys in the city, and to construct and keep in repair suitable crossings at the intersection of streets, avenues, and alleys and ditches, sewer and culverts, where the governing body shall deem it necessary, and to direct the use and regulate the speed of locomotive engines, trains, and cars within the city.

(19) To make all suitable and proper regulations in regard to the use of the streets for street cars, and to regulate the speed, running, and operation of the same so as to prevent injury or inconvenience to the public.

(20) To make such rules and regulations in relation to butchers as may be neces-

sary and proper; to establish and erect market houses, and designate, control, and regulate market places and privileges.

Cross Reference.—As to power of municipalities to establish and maintain meat inspection, see § 106-161.

(21) To prohibit and punish the abuse of animals.

(22) To acquire, establish, and maintain cemeteries and to regulate the burial of the dead and the registration of deaths, marriages, and births.

Cross References.—As to registration of marriages by the register of deeds, see § 51-18. As to registration of births and deaths generally, see § 130-69 et seq.

(23) To prohibit prize fighting, cock and dog fighting.

(24) To regulate, restrict, and prohibit theaters, carnivals, circuses, shows, parades, exhibitions of showmen, and shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, musical and hypnotic exhibitions and performances.

(25) To create and administer a special fund for the relief of indigent and helpless members of the police and fire departments who have become superannuated, disabled, or injured in such service, and receive donations and bequests in aid of such fund and provide for its permanence and increase, and to prescribe and regulate the conditions under which, and the extent to which, the same shall be used for the purpose of such relief. Also, to insure policemen, firemen, or any class of city employees against death or disability, or both, during the term of their employment under forms of insurance known as group insurance; the amount of benefit on the life of any one person not to exceed the sum of five thousand dollars, and the premiums on such insurance to be payable out of the current funds of the municipality. If and when the Congress of the United States amends the Federal Social Security Act so as to extend its provisions to include municipal employees, each municipality is hereby authorized to take such action or to appropriate such funds as are necessary to enlist their employees therein.

Local Modification.—City of Greensboro: 1955, c. 360; cities and towns in Halifax: 1949, c. 1123.

Cross References.—As to retirement system for counties, cities, and towns, see § 128-21 et seq. As to the firemen's relief fund of North Carolina, see § 118-12 et seq.

(26) To prevent and abate nuisances, whether on public or private property.

(27) To regulate and prohibit the carrying on of any business which may be dangerous or detrimental to health.

(28) To condemn and remove any and all buildings, partially destroyed or otherwise, in the city limits, or cause them to be removed, at the expense of the owner or owners, when dangerous to life, health, or other property, under such just rules and regulations as it may by ordinance establish; and likewise to suppress any and all other nuisances maintained in the city.

Local Modification.—Durham: 1959, c. 534; Morehead City: 1957, c. 716.

Cross References.—See § 160-182 et seq. As to zoning regulations, see § 160-172 et seq.

(29) To provide for all inspections which may be expedient, proper, or necessary for the welfare, safety, and health of the city and its citizens, and regulate the fees for such inspection.

Cross Reference.—As to power of municipality to establish and maintain meat inspection, see § 106-161.

(30) To require any or all articles of commerce or traffic to be gauged, inspected, measured, weighed, or metered, and to require every merchant, retail trader or dealer in mechandise of property of any description which is sold by weight or measure to have such weights and measures sealed and to be subject to inspection.

(31) To provide for the regulation, diversion, and limitation of pedestrians and vehicular traffic upon public streets, highways, and sidewalks of the city and to regulate and limit vehicular parking on streets and highways in congested areas.

In the regulation and limitation of vehicular traffic and parking in cities and towns the governing bodies may, in their discretion, enact ordinances providing for a system of parking meters designated to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents per hour) from those who park vehicles for stipulated periods of time in certain areas in which the congestion of vehicular traffic is such that public convenience and safety demand such regulation. The proceeds derived from the use of such parking meters shall be used exclusively for the purpose of making such regulation effective and for the expenses incurred by the city or town in the regulation and limitation of vehicular parking, and traffic relating to such parking, on the streets and highways of said cities and towns, or the proceeds derived from the use of such parking meters may be used to provide for the acquisition, construction, reconstruction, improvement, betterment, or extension and operation of off-street parking facilities as defined in § 160-414 (4), and may be pledged to amortize bonds or other evidence of debts issued for such purposes. Nothing contained in chapter two, section twenty-nine, of the Public Laws of one thousand nine hundred and twenty-one, or in section sixty-one of chapter four hundred and seven of the Public Laws of one thousand nine hundred and thirty-seven shall be construed as in any way affecting the validity of these parking meters or the fees required in the use thereof.

The governing authorities of all cities and towns of North Carolina shall have the power to own, establish, regulate, operate and control municipal parking lots for parking of motor vehicles within the corporate limits of cities and towns. Cities and towns are likewise hereby authorized, in their discretion, to make a charge for the use of such parking lots.

Local Modification.—Cumberland and cities therein: 1941, c. 153, s. 2(a); Surry: 1947, c. 178; cities and towns in Orange: 1941, c. 319; city of Greensboro: 1947, c. 392; city of Kings Mountain: 1951, c. 626; city of Roanoke Rapids: 1949, c. 3; city of Winston-Salem: 1947, c. 392; town of Bryson City: 1947, c. 655; town of Warrenton: 1951, c. 631.

(32) To regulate the emission of smoke within the city but no regulation relative to the emission of smoke shall extend to the acts of an employee or servant of a railroad company in making necessary smoke when stoking or operating a coal burning locomotive.

(33) To license, prohibit, and regulate pool and billiard rooms and dance halls, and in the interest of public morals provide for the revocation of such licenses.

(34) To regulate and control electricians and electrical work and to enforce efficiency in the same by examination of such electricians and inspection of such electrical work.

(35) To license and regulate all vehicles operated for hire in the city. To require that the operator of every jitney bus or taxicab and of every other motor vehicle, (other than jitney buses and taxicabs, operated under the jurisdiction of the Utilities Commission of North Carolina), engaged

in the business of transporting passengers for hire over the public streets of such city or town shall furnish and keep in effect for each such jitney bus, taxicab or other such motor vehicle so operated a policy of insurance or surety bond with sureties whose solvency shall at all times be subject to the approval of the governing body of such city or town, said policy of insurance or surety bond to be in such amount as may be fixed by the governing body of such city or town, not to exceed the sum of ten thousand dollars ($10,000.00), and to be conditioned on such operator responding in damages for any liability incurred on account of any injury to persons or damage to property resulting from the operation of any such jitney bus, taxicab or other such motor vehicle, and to be filed with the governing body of such city or town as a condition precedent to the operation of any such jitney bus, taxicab or other such motor vehicle over the streets of such city or town.

Local Modification.—Buncombe: 1939, c. 302.

(36) To acquire property in fee simple and to use the lands now owned in fee simple or otherwise for the purpose of establishing and maintaining new cemeteries. To abandon any cemetery which has not been used for interment purposes within ten years, and to remove or consolidate such cemetery, so abandoned, and the monuments, tombstones, fences, walls and enclosures, and the contents of any graves therein, or any part of either, at its own expense, to or with any established cemetery maintained for interment purposes; to take possession of, convey or utilize the lands in such abandoned cemetery, or any part thereof, as may best subserve the interests of the city or town.

Cross References.—See § 160-2, subdivision (3). As to the care of cemeteries, see §§ 160-258, 160-259 and 160-260.

(36a) To require that drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets of any city or town, make application to and receive from the governing board of any such city or town a driver's or operator's permit before operating or driving any such vehicle. The governing board may refuse to issue such permit to any person who has been convicted of: a felony; a violation of any federal or State statute relating to the use, possession, or sale of intoxicating liquors; any federal or State statute relating to prostitution; any federal or State statute relating to the use, possession, or sale of narcotic drugs; or to any person who is not a citizen of the United States; or to any person who is a habitual user of intoxicating liquors or narcotic drugs; or to a person who has been a habitual violator of traffic laws or ordinances.

The governing body may revoke any such driver's or operator's permit if the person holding such permit is convicted of: a felony; or violation of any federal or State statute relating to the possession or sale of intoxicating liquors; or violation of any federal or State statute relating to prostitution; or any federal or State statute relating to the use, possession or sale of narcotic drugs; or repeated violations of traffic laws or ordinances; or becomes a habitual user of intoxicating liquors or narcotic drugs.

The governing body may also require operators and drivers of taxicabs to prominently post and display in each taxicab, so as to be visible to the passengers therein, permit, rates and/or fares, fingerprints, photographs, and such other identification matter as deemed proper and advisable. The governing body is also authorized to establish the rates which may be charged by taxicab operators, and may grant franchises to taxicab operators on such terms as it deems advisable.

Local Modification.—Cherokee: 1951, c. 216.

(37) In cities or towns having a population of not less than twenty thousand inhabitants, the governing bodies may, in their discretion, create and establish a civil service with reference to any and all of the employees of such municipalities, and prescribe rules and regulations for the conduct and government of such civil service.

Cross Reference.—As to merit system for certain departments and agencies of city, district, county, and State, see § 126-1 et seq.

(38) Every incorporated city or town in the State, in addition to the other powers granted unto it by this chapter, shall have the following enumerated powers:

Whenever there shall be in any incorporated city or town a lot or lots owned by one or more persons, upon which water shall collect, either by falling upon the said lot or lots or collected thereon by drainage or otherwise from adjacent lots, no adequate drainage from which is provided by natural means, the governing body of any such city or town, upon being advised by the health officer of the said city or town, or the health officer of the county in which the town is located, that the conditions so existing are, or are liable to become, a nuisance and a menace to health in such city or town, is authorized to abate the nuisance, and to that end may proceed to abate it in the following manner:

Such city or town shall cause a survey to be made by a competent engineer to ascertain the means and methods and costs of providing an adequate drainage from such lot or lots and such engineer shall prepare plans and specifications to provide such drainage, with the estimated cost thereof and in making such survey he shall include therein the area of adjoining and adjacent lots which will be drained by such system of drainage. He shall also include in such survey the area of all adjoining and adjacent lots from which water flows and is gathered upon the lot or lots which are to be drained. The city or town shall thereupon cause notice to be published once in a newspaper published in the municipality, or if no newspaper is published in the municipality, then in a newspaper published in the county and of general circulation in the municipality, or if no newspaper is published in the county, said notice shall be posted in three public places in the municipality, which notice shall state in general and briefly the fact that a nuisance has been created and so declared, and that it is the purpose of the city or town to abate the same by causing a system of drainage to be put in, and that the cost thereof is to be paid or assessed in one of the ways hereinafter provided, that the report of the engineer is on file and subject to inspection, and that on a date to be named in the notice a hearing will be had before the board as to whether the plan shall be adopted and the assessment made, at which hearing the persons affected may be present and present such objections as they may have to the adoption of the report of the engineer and the doing of the work. Said notice shall also contain the names of the owners of the property affected in so far as the same can be ascertained on reasonable inquiry. Said notice shall be published or posted at least ten days before the hearing.

At the hearing provided for, if the governing body of the city or town shall determine that the work shall be done, and that the plans and specifications of the engineer are proper, it may adopt the said plans and specifications, and have the work done, either by letting a contract therefor or otherwise, and in the event a contract is let, it shall be advertised as is provided for in other cases of municipal work.

At the hearing above provided for, the governing body shall also determine the manner in which the cost of said work shall be paid or assessed, which shall be in either of the following ways: (i) Each and every lot affected by the plan or system shall be assessed with the cost thereof upon the following basis: that is to say, such proportion of the total cost of the survey and construction as the area of said lot bears to the total area as shown by the plans of the engineer when adopted by the governing body, which sum shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest; (ii) The cost of the survey and the construction of the main drains shall be borne by the municipality, and the cost of the construction of tributary drains assessed against the lots on which such tributary drains are constructed so that each lot shall bear the expense of tributary drains constructed on it. Said assessments shall be due in such annual installments as the governing body may determine, which shall not exceed five in number, and such installments shall bear interest.

The area which shall be included within and drained by the plans and specifications as herein provided for is hereby declared to be a "special improvement district."

The full faith and credit of such city or town shall be pledged for the payment of the said notes and interest when due.

The powers herein contained and hereby conferred are additional to any other powers conferred by any other law or laws, and are not affected by any limitations imposed by any other law.

The assessments, when made, shall be a lien upon the property benefited, and shall be collectible by the same means and methods as are other assessments for local or special improvements as is provided for in article nine of this chapter.

All acts or proceedings done or taken under this subdivision of this section prior to February 17, 1923, shall be valid.

Cross Reference.—As to letting of contract by municipality, county, etc., see § 143-129 et seq.

(39) The governing authorities of all cities and towns of North Carolina shall have the power to pass, alter, amend and repeal ordinances regulating the opening and closing hours of barber shops.

(40) The governing body of any municipality or other political subdivision of the State may, in its discretion, establish and support a public art gallery, museum or art center, using for such establishment and support any nontax revenues which may be available for such purposes. Such municipality or other political subdivision may, in its discretion, also support or assist in supporting any art gallery, museum or art center which is located in its territorial area and which is owned or operated by any nonprofit corporation provided such art gallery, museum or art center is open to the public, and to such end the municipality or other political subdivision may enter into a contract or other arrangement with such nonprofit corporation. The word "support" as used in this subsection shall include, but is not limited to, purchase of land for art gallery, museum or art center buildings, purchase and erection of buildings for art gallery, museums or art centers, purchase of paintings and other artistic works, purchase of materials and equipment, compensation of

art gallery, museum or art center personnel, and all maintenance expenses for necessary property and equipment.

The governing body of any municipality or other political subdivision of the State may, in its discretion, submit to the voters at a special election the question of whether a special tax shall be levied for the support of such art gallery, museum or art center. Such question shall be submitted to the voters either at the next general election for the officers of the municipality or other political subdivision of the State, or at a special election to be called by the governing body of the municipality or other political subdivision of the State for that purpose: Provided, that no special election shall be held within sixty (60) days of any general election for State, county or municipal officers. Such special election shall be conducted according to the laws governing general elections for officers in such municipality or other political subdivision of the State. The form of the question as stated on the ballot shall be in substantially the words: "For the levy of a special public art gallery, museum or art center tax of not more than .... cents (¢)" and "Against the levy of a special public art gallery, museum or art center tax of not more than .... cents (¢)." Such affirmative and negative forms shall be printed upon one ballot, containing squares opposite the affirmative and the negative forms, in one of which squares the voter may make a mark (X). Provided, that the maximum tax levy to be submitted to the voters shall be determined by the governing body of such municipality or other political subdivision of the State, which maximum shall in no event exceed ten cents (10¢) on the one hundred dollars ($100.00) valuation of property. If a majority of the qualified voters voting in such election favor the levy of the tax, the governing body of the municipality or other political subdivision of the State shall levy and cause to be collected as other general taxes are collected, a special public art gallery, museum or art center tax within the limits approved by the voters in an amount which, when taken with nontax revenues, will be sufficient to meet annual appropriations for public art gallery, museum or art center purposes approved by the governing body of such municipality or other political subdivision of the State.

(41) To adopt by reference thereto in an ordinance any published technical code or any standards or regulations promulgated by any public agency. Upon such adoption, such technical code, standards, or regulations shall have the force of law within the jurisdiction of the municipality, subject to the provisions of G. S. 143-138 (e); provided, that any municipality adopting by reference any technical code, standards, or regulations under authority of this section shall maintain conveniently accessible for public inspection an official copy of the same.

(42) To prohibit or to regulate itinerant merchants, peddlers, hawkers and solicitors. Such regulations may include, but shall not be limited to, requirements that an application be submitted, that a permit be issued, that an investigation be made, that such activities be reasonably limited as to time and area, that proper credentials and proof of financial stability be submitted, and that an adequate bond be posted to protect the public from fraud. (1917, c. 136, sub-ch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; Ex. Sess. 1920, c. 3, s. 10; 1921, c. 8, s. 3; Ex. Sess. 1921, c. 21; 1923, cc. 20, 102; 1925, c. 200; 1935, c. 279, s. 1; 1939, c. 164; 1941, c. 153, ss. 1, 2; c. 272; 1943, c. 639, s. 1; 1945, c. 564, s. 2; 1947, c. 7; 1949, cc. 103, 352; c. 594, s. 2; 1953, c. 171; 1955, c. 1338; 1957, c. 1182; 1959, c. 95; 1961, c. 309; 1963, cc. 789, 790, 986.)

I. General Consideration.
II. Streets and Parking.
III. Operators and Drivers of Taxicabs.
IV. Sunday Ordinances.
V. Powers as to Particular Matters.

I. GENERAL CONSIDERATION.

Cross References.—As to power to pass ordinances prior to the passage of this act, see § 160-52 et seq. As to power to appropriate money for local development, see § 158-1. As to power to avail itself of provisions of the bankruptcy law, see § 23-48. As to authority to aid and co-operate with the federal government and housing authorities in the planning, construction and operation of housing projects, see § 157-40 et seq.

Editor's Note.—The second 1921 amendment added subdivision (38). The first 1923 amendment added to subdivision (25) the provision for group insurance, and the second 1923 amendment made changes in subdivision (38).

The 1925 amendment made subdivision (11) applicable to alleys, and provided for the purchase of land necessary for closing streets or alleys.

The 1935 amendment added all of subdivision (35) except the first sentence, and the 1949 amendment added subdivision (39). The 1941 amendments added that part of subdivision (31) which appears after "city" in the first paragraph thereof.

The 1943 amendment inserted subdivision (36a) and the 1945 amendment added the last sentence thereof. Prior to the 1947 amendment the second paragraph of subdivision (31) was not applicable to municipalities of 20,000 or less.

The first 1949 amendment added the last sentence of subdivision (25). The second 1949 amendment added at the end of subdivision (5) "including public libraries and equipment for the same." And the third 1949 amendment rewrote subdivision (32).

The 1953 amendment inserted in the second paragraph of subdivision (31) the provision as to off-street parking facilities. And the 1955 amendment added subdivision (40). The 1957 amendment made subdivision (28) applicable to partially destroyed buildings. The 1959 amendment substituted "five thousand" for "two thousand" in subdivision (25).

The 1961 amendment inserted the second sentence in the first paragraph of subdivision (40).

The first 1963 amendment added subdivision (42), the second 1963 amendment added subdivision (41) and the third 1963 amendment added the second paragraph to subdivision (11).

Session Laws 1945, c. 176, made subdivisions (35), (36) and (36a) of this section applicable to the town of Rockingham in Richmond County.

For acts relating to parking meters in certain localities not affected by chapters 20 and 136 of the General Statutes, see Session Laws 1947, c. 54 (city of Shelby); c. 66 (town of Laurinburg); c. 735 (town of Mooresville); c. 1035 (Cabarrus county). And see Session Laws 1947, c. 675, amended by Session Laws 1949, c. 573, relating to city of Statesville.

For comment on the 1923 amendments see 1 N. C. Law Rev. 274, 277; on the 1943 amendment, see 21 N. C. Law Rev. 358; on the 1949 amendment, see 27 N. C. Law Rev. 474. As to comment in regard to control over grade crossings, see 2 N. C. Law Rev. 102.

For comment on the 1953 amendment, see 31 N. C. Law Rev. 426.

Control of Municipal Territory and Affairs.—"When a municipal corporation is established it takes control of the territory and affairs over which it is given authority to the exclusion of other governmental agencies. The object of incorporating a town or city is to invest the inhabitants of the municipality with the government of all matters that are of special municipal concern, and certainly the streets are as much of a special and local concern as anything connected with a town or city can well be. It ought, therefore, to be presumed that they pass under the exclusive control of the municipality so soon as it comes into existence under the law. Gunter v. Sanford, 186 N. C. 452, 120 S. E. 41 (1923)." Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

General Statutes Supplement Charter Provisions.—The provisions of a municipal charter are supplemented by the General Statutes of the State. Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

Municipal corporations have no inherent police powers and can exercise only those conferred by this section and such powers as are conferred are subject to strict construction. Kass v. Hedgpeth, 226 N. C. 405, 38 S. E. (2d) 164 (1946).

Ordinance within Power Granted Is Presumed Reasonable.—When an ordinance is within the grant of power to the municipality, the presumption is that it is reasonable. Gene's, Inc. v. Charlotte, 259 N. C. 118, 129 S. E. (2d) 889 (1963).

Incinerator for Disposition of Garbage.—An incinerator operated by a city for the burning of its garbage comes within the authority conferred upon it by statute and, its operation being a purely governmental function, exercised as a local agency of State government, the city is not liable for an injury caused by defect therein to an employee, in the absence of statutory provision to the contrary. Scales v. Winston-Salem, 189 N. C. 469, 127 S. E. 543 (1925).

Recovery of Excess Tax.—In order to recover money paid a municipality as a license tax in excess of the amount the town was lawfully authorized to collect, and in the absence of statutory regulations, or under the common law, it is necessary that the one so paying should have done so under protest at the time or under circumstances of duress or such as would endanger his person or property; and where the payment has been voluntarily made, the action may not be successfully maintained. Blackwell v. Gastonia, 181 N. C. 378, 107 S. E. 218 (1921).

Quoted in Clark v. Scheld, 253 N. C. 732, 117 S. E. (2d) 838 (1961).

Stated in Hinshaw v. McIver, 244 N. C. 256, 93 S. E. (2d) 90 (1956).

Cited in Mewborn v. Kinston, 199 N. C. 72, 154 S. E. 76 (1930); Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Shuford v. Waynesville, 214 N. C. 135, 198 S. E. 585 (1938); Hodges v. Charlotte, 214 N. C. 737, 200 S. E. 889 (1939); Petty v. Lemmons, 217 N. C. 492, 8 S. E. (2d) 616 (1940); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Sanders v. Smithfield, 221 N. C. 166, 19 S. E. (2d) 630 (1942); Suddreth v. Charlotte, 223 N. C. 629, 27 S. E. (2d) 650 (1943); as to subdivision (36a), in Airlines Transp., Inc. v. Tobin, 198 F. (2d) 249 (1952); as to subdivision (5) in Jamison v. Charlotte, 239 N. C. 423, 79 S. E. (2d) 797 (1954); Davis v. Charlotte, 242 N. C. 670, 89 S. E. (2d) 406 (1955); Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

II. STREETS AND PARKING.

Cross References.—As to power of municipality to use revenue from on-street parking meters to finance off-street parking facilities, see also § 160-499 and the annotations thereunder. As to notice required of closing of street, see annotation under § 153-9 (17).

The opening and closing of streets is a governmental function.—Bessemer Improvement Co. v. Greensboro, 247 N. C. 549, 101 S. E. (2d) 336 (1958).

Regulation of Selling from Mobile Units on Streets.—In the exercise of express powers conferred upon municipal corporations by the General Assembly a municipal corporation has the implied power to adopt an ordinance providing for the reasonable regulation, but not for the prohibition, of the sale and offering for sale of merchandise upon its streets from mobile units. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963), decided prior to the 1963 amendment which added subdivision (42) of this section giving authority to prohibit peddlers, etc.

Authority to Lay Out and Open Streets.—A municipal corporation is usually given express power by its charter to lay out and open streets. Such charter provisions are supplemented by our general statutes. Under the power thus conferred the municipal authorities are the sole judges of the necessity or expediency of exercising that right. Its power over its streets is exclusive. Waynesville v. Satterthwait, 136 N. C. 226, 48 S. E. 661 (1904); Moore v. Meroney, 154 N. C. 158, 69 S. E. 838 (1910); Michaux v. Rocky Mount, 193 N. C. 550, 137 S. E. 663 (1927). Authorities of the county embracing such municipality are precluded from exercising the same power within the same territory. Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

Closing Streets.—Defendant town, in co-operation with the federal and State authorities in procuring the construction of an underpass and the elimination of two grade crossings, closed two of its streets at the railroad crossings. This action was instituted by property holders adjacent to the railroad tracks and along one of the closed streets, alleging that the order closing the streets was ultra vires and resulted in the creation of a nuisance causing injury to plaintiffs' property. It was held that defendant town had authority, under express provision of its charter and under this section to close the said streets at the crossings in the interest of public welfare, and therefore the closing of the streets was in the exercise of a discretionary governmental power with which the courts can interfere only in instances of fraud or oppression constituting a manifest abuse of discretion, and did not constitute a nuisance of abuse of discretion, defendant town's demurrer to the complaint was properly sustained. Sanders v. Atlantic Coast Line R. Co., 216 N. C. 312, 4 S. E. (2d) 902 (1939).

Narrowing Sidewalk.—An abutting owner may not recover from a city damages resulting to his property by reason of the fact that the abutting sidewalk has been narrowed in order to widen the street under orders of the city commissioners, the width of the street and sidewalk being within the sound discretion of the commissioners. See also, § 160-78. Ham v. Durham, 205 N. C. 107, 170 S. E. 137 (1933).

License to Beg or Solicit Contributions on Streets.—A city ordinance in pursuance of subdivision (11) of this section requiring a license to be issued by the municipal authorities to beg upon the city streets or to solicit contributions for charitable or religious purposes, in accordance with whether the person or purpose is ascertained by such authorities as worthy or whether the moneys solicited will be properly applied, is a valid and undiscriminating exercise of a police power, and not unlawful as an interference with the religious liberties of our people, or an obstruction to the lawful pursuit of their business. State v. Hundley, 195 N. C. 377, 142 S. E. 330 (1928).

Regulation of Traffic and Use of Streets.—Every municipal corporation has specific statutory authority to adopt such ordinances for the regulation and use of its streets as it deems best for the public welfare of its citizens are to provide for the regulation and diversion of vehicular traffic upon its streets. Gene's, Inc. v. Charlotte, 259 N. C. 118, 129 S. E. (2d) 889 (1963).

In the installation and maintenance of

traffic light signals pursuant to authority of this section, a city exercises a discretionary governmental function solely for the benefit of the public, and may not be held liable for negligence of its officers and agents in respect thereto. Hamilton v. Hamlet, 238 N. C. 741, 78 S. E. (2d) 770 (1953).

The installation and maintenance of traffic lights by a municipality under authority of subdivisions (11) and (31) is in the interest of the public safety in the exercise of the police power, and is a discretionary governmental function. Hodges v. Charlotte, 214 N. C. 737, 200 S. E. 889 (1939).

Regulation of Parking of Vehicles.—A city ordinance prohibiting parking of automobiles on one side of a street on certain blocks where, because of the narrowness of the street, there is insufficient room for cars to pass between parked cars and a street-car track in the street, is valid in the light of subdivision (31) of this section. State v. Carter, 205 N. C. 761, 172 S. E. 415 (1934).

This section, prior to the 1941 amendment of subdivision (31), did not confer upon a municipality authority to enact ordinances imposing a parking fee or charge for a parking space. Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

A municipality may require a motorist who parks his vehicle in a parking meter zone to set the meter in operation by depositing a coin, provided that the deposit of the coin is the method selected by its governing body in the exercise of its discretion for the purpose of regulating parking in the interest of the public convenience and not as a revenue raising measure. State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

The deposit of a coin by a motorist at the time of parking, to activate the parking meter, is not a fee or charge or toll for using the parking space. It is simply the method adopted by the governing authorities of the city for putting the meter in operation. The revenue derived therefrom is expressly set apart and dedicated to a particular use by the legislature in the act granting authority to municipalities to regulate parking in areas congested by motor traffic by the use of parking meters. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

But Revenue Derived Is in the Nature of a Tax.—The revenue derived from the on-street parking facilities is exacted in the performance of a governmental function. It must be set apart and used for a specific purpose. By whatever name called, it is in the nature of a tax. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

Validity of Parking Meter Ordinances.—Where a municipal ordinance prescribes one-hour and two-hour parking meter zones upon the deposit of a five-cent coin, the ordinance may permit by nonpenal provisions that a motorist may deposit a one-cent coin for a shorter length of time, provided the motorist may, by depositing additional pennies, not to exceed a total of five, remain in the parking space for the total length of time prescribed by the ordinance for such zone. State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

Where a municipal ordinance prescribes that parking in a designated zone should be limited to one hour, a motorist cannot be convicted of overtime parking when he parks in such zone for less than the prescribed one hour period, and a provision of the ordinance that a motorist should be subject to criminal prosecution if he parks in the one hour zone for longer than twelve minutes upon the deposit of a one-cent coin, or twenty-four minutes upon the deposit of two one-cent coins for successive periods, is held unconstitutional as being discriminatory and as making the period of time dependent not upon public convenience but upon the amount of money deposited. State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

Contract Binding City to Enact Parking Meter Ordinance.—A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

In Graham v. Karpark Corp., 194 F. (2d) 616 (1952), it was held that a contract made with a parking meter manufacturer by city commissioners whereby they agreed to enact ordinances requiring parking meters and to enforce these ordinances until the meters were paid for, did not constitute a bargaining away of governmental powers, but was valid and binding upon the commissioners' successors in office.

III. OPERATORS AND DRIVERS OF TAXICABS.

Licensing and Regulation in General.—The legislature has deemed it to be the part of wisdom to delegate to the various municipalities of the State the power to license, regulate and control the operators and drivers of taxicabs. In the exercise of this delegated power, it is the duty of the municipal authorities, in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when in the exercise of such discretion an ordinance is adopted, it is presumed to be valid; and, the courts will not declare it invalid unless it is clearly shown to be so. State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901 (1949); Victory Cab Co. v. Shaw, 232 N. C. 138, 59 S. E. (2d) 573 (1950).

Subdivision (35) imposed no requirement or obligation but merely conferred a power,

to be exercised if the legislative body of a municipal corporation saw fit to do so, and it speaks only of "a policy of insurance or surety bond" and contains no reference to a deposit of cash or securities on like condition. Perrell v. Beaty Service Co., 248 N. C. 153, 102 S. E. (2d) 785 (1958).

Security Not Liable for Injury on Private Garage Premises.—Where a municipal ordinance passed pursuant to this subsection required taxicab operators to deposit insurance, surety bonds, or cash or securities, conditioned upon the payment of a final judgment in favor of any person injured by the operation of a cab over the municipal streets, the cash or securities deposited for the operation of cabs under a stipulated trade name, filed with the municipality under an agreement pursuant to the ordinance, did not cover a final judgment for injuries to a garage mechanic from the negligent operation of the cab while on private garage premises. Perrell v. Beaty Service Co., 248 N. C. 153, 102 S. E. (2d) 785 (1958).

As used in subdivision (36a), the word "franchise" denotes a right or privilege conferred by law—a special privilege conferred by government on an individual, natural or corporate, which is not enjoyed by its citizens generally, of common right. Ordinarily the grant of a franchise when accepted and acted on creates a contract which is binding on the grantor and the grantee. Hence, the grant of a franchise contemplates, and usually embraces, express conditions and stipulations as to standards of service, and so forth, which the grantee or holder of the franchise must perform. Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

Requiring Taxicab Drivers to Wear Distinctive Insignia.—It is not an unlawful, unreasonabe or an arbitrary exercise of the police power which has been delegated to local municipal authorities by the legislature, for a city to require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab shall wear a distinctive cap or other insignia while operating a taxicab, to show that he is a duly licensed taxicab driver. Such a requirement would seem to be reasonable and a protection to the public against unlicensed drivers or operators. State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901 (1949).

Requiring Taxicab Operators to Secure Liability Insurance.—An ordinance requiring operators of taxicabs or other motor vehicles for hire to secure liability insurance or enter into bond with personal or corporate surety is a valid exercise of the police power and expressly authorized by this section and does not violate the Fourteenth Amendment of the Federal Constitution, the operation of vehicles for gain being a special and extraordinary use of the city's streets, which it has the power to condition by ordinance uniform upon all coming within the classification. Watkins v. Iseley, 209 N. C. 256, 183 S. E. 365 (1936), citing Packard v. Banton, 264 U. S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924).

Coverage of Indemnity Bond.—An indemnity bond for a taxi corporation did not cover liability for injuries inflicted prior to the execution of the bond. Manheim v. Virginia Surety Co., 215 N. C. 693, 3 S. E. (2d) 16 (1939).

The words "terms" as used in subdivision (36a) is referable to the covenants to be made and required in connection with the issuance of franchises, rather than to any monetary consideration to be charged therefor. Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

The word "terms" as used in subdivision (36a) is not referable to and does not authorize the assessment and collection of fees by a city or town in consideration for franchise privileges to be granted taxicab operators. Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

Subdivision (36a) does not authorize a city to impose exactions on taxicabs beyond the limits fixed by § 20-97, subsections (a) and (b). Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

IV. SUNDAY ORDINANCES.

Ordinances Constitutional.—Ordinances prohibiting certain activities on Sunday, enacted pursuant to this section, are not in contravention of art. I, § 26 of the State Constitution. State v. McGee, 237 N. C. 633, 75 S. E. (2d) 783 (1953).

Municipalities May Enact.—By virtue of this section the power to enact Sunday ordinances has been delegated to the municipalities of the State. State v. Trantham, 230 N. C. 641, 55 S. E. (2d) 198 (1949).

Power to Enact Not Repealed by Repeal of § 103-1.—Neither the repeal of § 103-1, nor the provision in the repealing act with respect to the repeal of all laws and clauses of laws in conflict therewith, has the effect of repealing the power granted to municipalities by subdivisions (6), (7) and (10) of this section to enact ordinances requiring the observance of Sunday. State v. McGee, 237 N. C. 633, 75 S. E. (2d) 783 (1953).

Regulating the sale of merchandise, drinks, etc., on Sunday is a valid exercise of the police powers of an incorporated city or town. And while the service of meals within the municipality at restaurants, etc., is a necessity, permitting the sale of coffee, tea, etc., the sale of coca-cola as a part of the meals is not included, and a sale thereof as a part of the meal may be prohibited by ordinance. State v. Weddington, 188 N. C. 643, 125 S. E. 257 (1924).

V. POWERS AS TO PARTICULAR MATTERS.

Acquisition and Maintenance of Parks.—Under the provision of our general statutes, a city or town is given authority to acquire and maintain parks for the use of its citizens beyond its corporate limits, and to provide suitable streets or ways of access thereto for the purpose. Berry v. Durham, 186 N. C. 421, 119 S. E. 748 (1923).

Lease of Part of Municipal Building.—A city has authority under this section to lease an auditorium in its municipal building which was equipped at the time the building was erected with a ticket booth and a moving picture projecting equipment, it appearing that the lease does not involve property held in trust for the use of the city, or property devoted to governmental purposes, although administrative offices of the city are located elsewhere in the building. Cline v. Hickory, 207 N. C. 125, 176 S. E. 250 (1934).

Expenditures for parks and recreational facilities under subdivision (12) seem to fall within the class of water and sewer facilities, described in §§ 160-239 and 160-255, when operated in a governmental capacity, that is for direct benefit by the citizens of the municipality. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Abandonment of Public Park.—The authority conferred by subdivision (12) does not give a municipality the power to abandon an established public park. Wishart v. Lumberton, 254 N. C. 94, 118 S. E. (2d) 35 (1961).

A municipal corporation has a legal right to destroy mosquitoes detrimental to the health and comfort of its residents. Moore v. Plymouth, 249 N. C. 423, 106 S. E. (2d) 695 (1959).

Memorial Markers in Cemeteries.—Subdivisions (22) and (36) of this section do not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

License Tax on Automobiles.—Section 20-97 provides for a city automobile license of one dollar, and a license for more than that amount is invalid, if levied on ownership alone, for this section is not contrary to § 20-97 and they must be construed together. State v. Jones, 191 N. C. 371, 131 S. E. 734 (1926).

Regulation of Dance Halls.—Cities have power, among other things, to license, prohibit, and regulate dance halls, by express provisions of this section, and in the interest of public morals provide for the revocation of such licenses, as valid exercise of the State's inherent police power, made applicable to cities and towns generally. State v. Vanhook, 182 N. C. 831, 109 S. E. 65 (1921).

An ordinance requiring the consent of the board of directors of the city before keeping a dance hall therein is not objectionable as an arbitrary exercise of power, or as being at the pleasure of the board, but comes within its limited legal discretion, which the courts will not permit it to abuse, but will not disturb in the absence of its abusive use. State v. Vanhook, 182 N. C. 831, 109 S. E. 65 (1921).

Regulation of Markets.—A city in the exercise of statutory authority may enact a valid penal ordinance as affecting the health of its citizens, and under its police power, require that meats, fish, oysters and perishable matter to be sold at a sanitary market building containing refrigeration and other sanitary methods, under proper inspection, where adequate accommodation may be obtained at a reasonable rental, not for profit, and may exclude such business within a prescribed territory therefrom, the location of the market-house being reasonably suitable to the business or trades specified. Angelo v. Winston-Salem, 193 N. C. 207, 136 S. E. 489 (1927).

Ordinance against Keeping Cows.—An ordinance forbidding the keeping of cows within a certain portion of the city is valid. State v. Stowe, 190 N. C. 79, 128 S. E. 481 (1925).

Forbidding Lumber Yards in Residential Sections.—In Turner v. New Bern, 187 N. C. 541, 122 S. E. 469 (1924), the principle was laid down: "Under the provision of this section and under the provision of its charter authorizing a city to pass needful ordinances for its government not inconsistent with the law to secure the health, quiet, safety—general welfare clause—within its limits, etc., it is within the valid discretionary exercise of the police powers of the municipality to pass an ordinance forbidding the erection of lumber yards within a long established, exclusively residential portion, and when this discretionary power has not been abused the courts will not interfere." Angelo v. Winston-Salem, 193 N. C. 207, 136 S. E. 489 (1927).

Peddling.—For case decided prior to the 1963 amendment adding subdivision (42) of this section, see State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963), wherein it was held that a municipality had implied power to regulate, but not prohibit, selling on streets from mobile units. Subdivision (42) now gives authority to prohibit peddlers, etc.

§ 160-201. Salary of mayor and other officers.—The governing body of any city may by ordinance fix the salary of the mayor of such city or heads of departments or other officers. (1917, c. 136, sub-ch. 5, s. 6; C. S., s. 2788.)

Cross References.—As to provisions as to salary of mayor and other officers under plan A, see § 160-311; under Plan B, see § 160-320; under Plan C, see § 160-337; and under Plan D, see § 160-346.

§ 160-202. Enumeration of powers not exclusive.—The enumeration of particular powers by this subchapter shall not be held or deemed to be exclusive; but in addition to the powers enumerated or implied therein, or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the Constitution and laws of North Carolina now are or hereafter may be granted to cities. Powers proper to be exercised, and not specially enumerated herein, shall be exercised and enforced in the manner prescribed by this subchapter; or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the governing body. (1917, c. 136, sub-ch. 5, s. 3; C. S., s. 2789.)

Cited in Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

§ 160-203. Police power extended to outside territory.—All ordinances, rules, and regulations of the city now in force, or that may hereafter be enacted by the governing body in the exercise of the police powers given to it for sanitary purposes, or for the protection of the property of the city, unless otherwise provided by the governing body, shall, in addition to applying to the territory within the city limits, apply with equal force to the territory outside of the city limits within one mile in all directions of same, and to the rights of way of all water, sewer, and electric light lines of the city without the corporate limits, and to the rights of way without the city limits, of any street railway company, or extension thereof, operating under a franchise granted by the city, and upon all property and rights of way of the city outside the corporate limits and the above-mentioned territorial limits, wheresoever the same may be located. (1917, c. 136, sub-ch. 5, s. 2; C. S., s. 2790.)

Where a subdivision is laid out within one mile of a city, knowledge of the city's ordinances concerning water and sewer lines is presumed. Spaugh v. Winston-Salem, 234 N. C. 708, 68 S. E. (2d) 838 (1951).

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Jackson v. Gastonia, 246 N. C. 404, 98 S. E. (2d) 444 (1957); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 160-203.1. Powers over cemetery outside corporate limits.—Any incorporated city or town which owns a cemetery situated outside the corporate limits of said city or town is hereby authorized to exercise the same powers in the same manner and to the same extent with respect to such cemetery as if such cemetery were located within the corporate limits thereof. (1951, c. 1044.)

Cross Reference.—As to care of cemeteries, see §§ 160-258 through 160-260.

Part 2. Power to Acquire Property.

§ 160-204. Acquisition by purchase.—When in the opinion of the governing body of any city, or other board, commission, or department of the government of such city having and exercising or desiring to have and exercise the management and control of the streets, water, electric light, power, gas, sewerage or drainage systems, or other public utilities, fire departments and fire stations, parks, playgrounds, cemeteries, wharves, or markets, open-air or enclosed, which are or may by law be owned and operated or hereafter acquired by such city or by a separate association, corporation, or other organization on behalf and for the benefit of such city, any land, right of way, water right, privilege, or easement, either within or outside the city, shall be necessary for the purpose of opening, establishing, building, widening, extending, enlarging, maintaining, or operating any such streets, parks, playgrounds, cemetery, water, electric light, power, gas, sewerage or drainage systems, wharves, or other public utility so owned, operated, and maintained by or on behalf of any such city, such governing body, board, commission, or department of government of such city may purchase such land, right of way, water right, privilege, or easement from the owner or owners thereof and pay such compensation therefor as may be agreed upon. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S., s. 2791; 1961, c. 982.)

Cross Reference.—As to power to purchase real estate generally, see § 160-2, subdivision (2).

Editor's Note.—Session Laws 1957, c. 128 made this Part applicable to the town of Elkin.

The 1961 amendment added "fire departments and fire stations" near the beginning of the section.

The peculiar feature of this proceeding is the combination of a condemnation under eminent domain and special assessments for improvements in assessment districts. It is not intended to supplant any powers given in special charters, but gives an alternative method of procedure. Another plan for making such improvements is contained in the local improvement statutes, § 160-78 et seq., in which the assessment plan is used but only for part of the expense, and the amounts of the assessments are determined through the governing body instead of by a special proceeding in court; and the condemnation of property would be a separate proceeding under the law of eminent domain. 1 N. C. Law Rev. 275.

Power Discretionary.—See note to § 160-205. Where it appears that the governing authorities of a town have taken lands to widen a street intersecting with other streets so as to lessen the danger to traffic thereon, and it is made to appear that doing so was a reasonable exercise of the discretion vested in them, the findings that such course was unnecessary is not binding on the Supreme Court, the question being, primarily, whether the administrative authorities of the town have so grossly and manifestly abused the exercise of their discretionary powers as to render their action ineffectual. Lee v. Waynesville, 184 N. C. 565, 115 S. E. 51 (1922).

The power to construct power lines and plants outside corporate limits is limited by the provisions of the Revenue Bond Act of 1935, since the Act expressly repeals inconsistent provisions of any prior general or special law, and under the provisions of the Revenue Bond Act a municipality may construct such lines and plants only in consonance with the policy of the Act and the authority therein given municipalities to provide such conveniences for the health, safety, and benefit of the citizens of the municipality. Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938).

Power of Extraterritorial Condemnation.—This and the following section expressly confer the power of extraterritorial condemnation where municipality has right to acquire property. Charlotte v. Heath, 226 N. C. 750, 40 S. E. (2d) 600, 169 A. L. R. 569 (1946).

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N. C. 549, 101 S. E. (2d) 336 (1958).

This Section and § 160-205 Compared Historically with § 40-10.—See Mount Olive v. Cowan, 235 N. C. 259, 69 S. E. (2d) 525 (1952).

This Section and § 160-205 Not Limited by § 40-10.—The power granted to a municipality to condemn land for street and other purposes by this section and § 160-205 is not limited or restricted by § 40-10, prohibiting condemnation of dwelling houses and burial grounds. Mount Olive v. Cowan, 235 N. C. 259, 69 S. E. (2d) 525 (1952). See Raleigh v. Edwards, 235 N. C. 671, 71 S. E. (2d) 396 (1952).

By virtue of this section and § 160-205 the governing body of a municipality, for the purpose of erecting an elevated water storage tank as an addition to its water system, has the power, in the exercise of a sound discretion, to acquire by condemnation, if need be, dwelling house properties either within or outside the city, and this is so irrespective of the provisions of § 40-10 and the related statute, § 40-2 (2). Raleigh v. Edwards, 235 N. C. 671, 71 S. E. (2d) 396 (1952).

Acquisition of Easement by Payment of Permanent Damages.—Where plaintiff landowners demand permanent damages in their action against a municipality for trespass based upon the construction by the municipality of a storm sewer line over their lands, and defendant municipality prays for an easement for the purpose of maintaining such drainage system, under the verdict and judgment awarding permanent damages the municipality, upon payment of the damages awarded, acquires a permanent easement to maintain its storm sewer line so long as it is kept in proper repair. McLean v. Mooresville, 237 N. C. 498, 75 S. E. (2d) 327 (1953).

Parks Outside of City.—The General Statutes giving power to cities and towns to acquire parks for its citizens outside of the corporate limits, and provide access for the public thereto, prevail whenever and to the extent there is no irreconcilable repugnancy with special charter provisions on the same subject. Berry v. Durham, 186 N. C. 421, 119 S. E. 748 (1923).

Paving of Dedicated Streets Outside City Limits.—This section gives a city the right to acquire streets "within or outside the city," and to "exercise the management and control of the streets," etc. The language is broad enough to give a city authority to pave streets outside the city that were dedicated to the city, there being no necessity to purchase same. High Point v. Clark, 211 N. C. 607, 191 S. E. 318 (1937).

Power of City to Construct Railroad Track Outside Corporate Limits.—See Austin v. Shaw, 235 N. C. 722, 71 S. E. (2d) 25 (1952).

Quoted in Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942); Davidson

v. Stough, 258 N. C. 23, 127 S. E. (2d) 762 (1962); Guilford Realty & Ins. Co. v. Blythe Bros. Co., 260 N. C. 69, 131 S. E. (2d) 900 (1963).

Cited in Durham v. Sou. R. Co., 185 N. C. 240, 117 S. E. 17 (1923); Winston-Salem v. Ashley, 194 N. C. 388, 139 S. E. 764 (1927); Winston-Salem v. Smith, 216 N. C. 1, 3 S. E. (2d) 328 (1939); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Morganton v. Hutton & Bourbonnais Co., 251 N. C. 531, 112 S. E. (2d) 111 (1960).

§ **160-205. By condemnation.**—If such governing body, board, commission or department of the government of such city are unable to agree with the owners thereof for the purchase of such land, right of way, privilege, or easement, for the purposes mentioned in the preceding section, or for a site for city hall purposes, condemnation of the same for such public use may be made in the same manner and under the same procedure as is provided in chapter Eminent Domain, article 2; and the determination of the governing body, board, commission, or department of government of such city of the land necessary for such purposes shall be conclusive. (1917, c. 136, sub-ch. 4, s. 1; 1919, c. 262; C. S., s. 2792; 1923, c. 181.)

Cross References.—As to condemnation proceedings, see § 40-11 et seq. See note to § 160-204.

Editor's Note.—The 1923 amendment changed this section by empowering municipalities to condemn land for a site for a city hall, as well as for the various purposes mentioned in § 160-204. 1 N. C. Law Rev. 277.

Attempt to Acquire under § 160-204 Prerequisite to Condemnation.—Under the provisions of this section before a city may take lands by condemnation to widen its streets it is necessary for it to allege and prove that it has first attempted to acquire them by purchase as provided by § 160-204. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764 (1927).

Same—Property of Persons under Disability.—Under this section an attempt by a city to acquire lands of owners before proceeding to condemn the lands is a preliminary jurisdictional fact. But the statute does not contemplate the useless formality of attempting to acquire the property of persons under disability, such as minors. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764 (1927).

City Charter Inconsistent with Section.—The right of eminent domain of a municipality can be exercised only in the mode pointed out in the statute conferring it; and where the method prescribed for the city or town in its charter is inconsistent with or repugnant to this section by the express terms the proceedings given under the municipal charter will have to be followed in condemnation of lands for the use of its streets. Clinton v. Johnson, 174 N. C. 286, 93 S. E. 776 (1917).

Improvements No Bar to Condemnation.—The governing authorities of a town are not estopped to condemn land for the widening or improvement of its streets by reason of an owner having put extensive improvements on his land a long time prior to the time it was condemned for that purpose, the power of condemnation, in cases of this character, being a continuing one to be exercised when and to the extent that the public good may require it. Lee v. Waynesville, 184 N. C. 565, 115 S. E. 51 (1922).

Condemnation to Widen State Highway within City.—A petition by a municipality to condemn land upon allegations that the land sought to be condemned was necessary to widen a part of the State highway within the city limits, which project had been approved by an ordinance for the acquisition of such land under an agreement with the State Highway Commission providing that the city should secure and dedicate the right of way and the Highway Commission should perform the construction work, was held to state a cause of action, since the city is given express authority by this and the following section to condemn land for such purpose. Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

County Highway May Not Be Condemned.—This section does not imply legislative authority upon a municipality to condemn portions of county highways in the construction of a hydroelectric generating system. Yadkin County v. High Point, 217 N. C. 462, 8 S. E. (2d) 470 (1940).

Land Owned by Railroad Company.—A municipal corporation had power, under its charter and the general powers of eminent domain conferred upon it by statute, to condemn for necessary street purposes a strip of land owned by a railroad company when such property was not being used by the railroad company and was not necessary nor essential to the operation of its business. Goldsboro v. Atlantic Coast Line R. Co., 246 N. C. 101, 97 S. E. (2d) 486 (1957).

Condemnation for Pipe Lines Outside of City Limits.—The city of Charlotte was authorized by its charter to extend its public services, including that of water and sewerage, to those living beyond the city limits, and to acquire the facilities used for said purposes, including pipe lines, and this right being existent, under this section city had the right to exercise its power of eminent domain to condemn lands and property rights for said purposes. Charlotte v. Heath, 226 N. C. 750, 40 S. E. (2d) 600, 169 A. L. R. 569 (1946).

Constitutionality of Private Statutes.—The acquisition of land to be used to connect a railroad in which the State and counties own an interest with the city's public wharves and docks for water commerce, and necessary to continue or develop the industries of its citizens, is for a public use, and not subject to the exception that the city, in taking the right of way by condemnation from the owner, according to the provisions of its charter and the General Statutes, was acting in violation of the Constitution in taking private property for a public use; and the private statutes specifically authorizing the proceedings are constitutional and valid. Hartsfield v. New Bern, 186 N. C. 136, 119 S. E. 15 (1923).

Applied in McLean v. Mooresville, 237 N. C. 498, 75 S. E. (2d) 327 (1953); Davidson v. Stough, 258 N. C. 23, 127 S. E. (2d) 762 (1962).

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Morganton v. Hutton & Bourbonnais Co., 251 N. C. 531, 112 S. E. (2d) 111 (1960); Guilford Realty & Ins. Co. v. Blythe Bros. Co., 260 N. C. 69, 131 S. E. (2d) 900 (1963).

§ 160-206. Powers in addition and supplementary to powers in charters.—It is the intention of §§ 160-206 to 160-221 that the powers herein granted to cities for the purpose of improving their streets and improving their drainage and sewer conditions shall be in addition and supplementary to those powers granted in their charters, and in any case in which the provisions of these sections are in conflict with the provisions of any local statute or charter, then the governing body of any such municipality may in its discretion proceed in accordance with the provisions of such local statute or charter, or, as an alternative method of procedure, in accordance with the provisions of these sections. (1923, c. 220, s. 1; C. S., s. 2792(a).)

Quoted in Raleigh v. Hatcher, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

Cited in Greensboro v. Bishop, 197 N. C. 748, 150 S. E. 495 (1929).

§ 160-207. Order for condemnation of land; assessment districts; maps and surveys; hearing.—When it is proposed by any municipal corporation to condemn any land, rights, privileges or easements for the purpose of opening, extending, widening, altering or improving any street or alley, or changing or improving the channel of any branch or watercourse, for the purpose of improving the drainage conditions, or the laying and construction of sanitary, storm or trunk sewer lines in such municipality, an order or resolution of the governing body of the municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement for which the land is required, and shall lay out, constitute and create an assessment district extending in every direction to the limits of the area or zone of damage or special benefits to property resulting from said improvement, in the best judgment of said governing body. Said governing body shall cause such maps and surveys to be made showing the area of such assessment district and improvements proposed to be made, and of all the lands located in said assessment district, as it may deem necessary. The governing body shall appoint a time and place for its final determination thereof, and cause notice of such time and a brief description of such proposed improvement to be published in some newspaper published in said municipality for not less than ten days prior to said meeting. At said time and place said governing body shall hear such reasons as shall be given for or against the making of such proposed improvement, and it may adjourn such hearing to a subsequent time: Provided, however, that no district shall be declared as an assessment district by the governing body of any municipality, where the purpose of the proposed improvements contemplates the opening of a new or the widening of an existing street and the destruction or removal of buildings abutting thereon and where as much or more than fifty per cent of the costs of such proposed improvement is to be charged against the property within such district, unless and until a petition therefor signed by the owners of a majority of the street frontage to be assessed within said district shall be filed with the governing body of the municipality: Provided, further, that for the purpose of this section the word "owners" shall be considered to mean the owners of a life estate or estate by the entirety or the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lien-holders, or persons having inchoate rights of curtesy or dower, and that the owners of undivided interests in any land shall be deemed and treated as one person, and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interest: Provided, further, that the owner of a leasehold estate of ninety-nine years or longer shall be deemed to be the owner within the meaning of this section: Provided, further, that the governing bodies of municipalities and the officers, trustees, or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign such petition. The determination of the governing body upon the sufficiency of the petition shall be final and conclusive. (1923, c. 220, s. 2; C. S., s. 2792(b); Ex. Sess. 1924, c. 107; 1927, c. 115.)

Construed with Other Sections.—This section should be construed in pari materia with the other sections relating to this subject so as to reasonably harmonize them, and when so construed it is in harmony with § 160-205. Winston-Salem v. Ashby, 194 N. C. 388, 139 S. E. 764 (1927).

Acquiring Land and Assessment for Improvements in Same Action.—Under the provisions of §§ 160-206 through 160-221 a city may in the same action proceed to acquire land for a street by condemnation and to have the assessment made for street improvements on the lands of the abutting owner. Efird v. Winston-Salem, 199 N. C. 33, 153 S. E. 632 (1930).

Who Must Sign Petition.—Where the abutting owners along a street of a city proposed to be widened by a municipality are to pay more than 50 per cent of its costs, the petition required by the statute to be filed with the municipality must show that it was signed by a majority of the owners along the street, including those who have the beneficial interest, and the majority of such persons must own a majority of the frontage of the lots along the street. Winston-Salem v. Coble, 192 N. C. 776, 136 S. E. 123 (1926).

Manner of Determining Equality.—The fact that the commissioners adopted a so-called "frontage rule" in fixing the value of the benefits or advantages to the different lots within the assessment district, is not sufficient to upset the apportionment made, without an additional finding that the application of such a rule resulted in hardship or injustice to the property owners in the particular case. It is only such practicle equality as is reasonably attainable under the circumstances, and not absolute mathematical accuracy, that is to be expected in a matter of this kind. Durham v. Proctor, 191 N. C. 119, 131 S. E. 276 (1926).

Cited in Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

§ 160-208. Final order; petition for appointment of commissioners.—Whenever a final order shall be made by such governing body creating such assessment district and directing the laying out, opening, extending, altering, straightening or widening any street or alley, or the changing or otherwise improving any channel or watercourse for the purpose of improving the drainage conditions, or the building and construction of any sanitary, storm or trunk sewer lines in any such municipality, also its determination to condemn land, rights, privileges or easements for the purpose of making such proposed improvement, it shall determine what proportion of the estimated cost thereof, if any, shall be assessed against the city at large. After the adoption of such final order, as aforesaid, the governing body of such municipality shall file with the clerk of the superior court its petition, praying for the appointment of three commissioners to estimate and assess the expenses of the proposed improvement and to appraise and value the real property, rights, privileges or easements proposed to be taken or condemned for public use, also to appraise the value of the benefits accruing from such improvement to all property as shown and described on the maps or surveys of such assessment district. The petition shall set forth and describe the particular property, rights, privileges or easements proposed to be taken or condemned for the purposes, as aforesaid, also all other property situated and located in said assessment district, as shown on the maps or surveys of same, a copy or copies of which maps or surveys shall be filed with such petition, and such petition shall state the names and addresses of the owner or owners who have any interest in the lands therein which may be affected by the said condemnation or the said assessment of benefits, and whether any of the said owners are minors or without guardians. (1923, c. 220, s. 3; C. S., s. 2792(c).)

§ 160-209. Summons; return day; conduct of proceedings.—Upon the filing of said petition the clerk of the superior court shall issue a summons to the parties interested in the lands, rights, privileges or easements sought to be taken for public use and benefits proposed to be assessed, described in such petition, requiring them to appear at his office in the courthouse of said county on a day at least ten and not more than twenty days after the service of said summons, and answer or otherwise plead to the petition, or show cause why such condemnation, improvement and assessment of benefits should not be made. The said proceeding shall be conducted in all respects as are other special proceedings, and the clerk may issue process and make publication for parties and appoint guardians in like manner as is provided by law in the case of special proceedings. (1923, c. 220, s. 4; C. S., s. 2792(d).)

§ 160-210. Hearing; appointment of commissioners; damages and benefits.—The clerk of the superior court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, he shall make an order appointing three disinterested competent freeholders of the county as such commissioners. The clerk shall issue a notice of their appointment to the said freeholders, to be served upon them by the sheriff of the county, and when so notified, they shall, within five days after being sworn to perform the duties which shall devolve upon them, go upon the premises and ascertain the value of the land, rights, privileges or easements to be taken for public use, determine by a majority vote the amount of damages, if any, to be paid for the same. Said commissioners shall also go upon the lots or lands described in the petition and shown on such maps or survey of such assessment district, including the land condemned or any remainder thereof, and ascertain and determine by a majority vote the value of the benefits or advantages to such lots or lands accruing from the opening, extending, widening or improving said street or alley, or the changing or improving the channel of any branch or watercourse, or the building and construction of such sanitary, storm or trunk line sewers, both such benefits or advantages as are special to such lots and the benefits or advantages in common with other lots located in said assessment district: Provided, that if, in the judgment of the commissioners, any portion of the benefits accrue to the city at large, then a part of the estimated cost of such improvement, not exceeding the proportion fixed by said governing body in its final order or resolution, shall be assessed upon the city at large. Before making the reports hereinafter referred to the commissioners may take the evidence of witnesses as to the estimated cost of such improvement, the damage to such land or lands so condemned for public use, and the amount that should be paid therefor, and the benefits accruing to all other lands within such assessment district, either special or in common with others, as shown on such map or survey. In making the valuation and assessments aforesaid, the commissioners shall consider the loss or damage that may accrue to the owner or owners of the land condemned by reason of the surrender of the land or easement, and also any benefit or advantage such owner or owners may receive by reason of the making of such improvements, special to his land or in common with other lots located in said assessment district. (1923, c. 220, s. 5; C. S., s. 2792(e).)

§ 160-211. Written reports; land acquired on deposit of award.—The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the land, rights, privileges or easements so condemned, together with the amount to be paid each owner thereof, and upon deposit with the said clerk of the amount determined by said commissioners to be due said owners by such municipality, such land, rights, privileges or easements shall be deemed to be acquired for public use. (1923, c. 220, s. 6; C. S., s. 2792(f).)

§ 160-212. Report of benefits or advantages; assessment; hearing; confirmation; lien.—The said commissioners shall make a separate written report of their findings to the clerk of the superior court within ten days after notice of their appointment, relative to the benefits or advantages so appraised against said lands located in said assessment district, if any, giving the names of the owners thereof and the amount so appraised against each, with a brief description of the lots or parcels of land so appraised. The clerk shall thereupon deliver to the said governing body of such municipality a certified copy of such appraisal of benefits, which certified copy of appraisal of benefits, upon such receipt by said governing body, shall thereupon become an assessment roll, which the governing body shall cause to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published a notice of the completion of such assessment roll, setting forth a description in general terms of the local improvement, and the time fixed for the meeting of the governing body for the hearing of allegations and objections relative to the adoption of such assessment roll, such meeting not to be earlier than ten days from the first publication of such notice, which publication shall be made in a newspaper published in such municipality. At the time appointed for the purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll and either confirm the same or may set it aside and provide for a new appraisal of benefits in such proceeding pending before the clerk of the superior court. Whenever the governing body may confirm an assessment for such improvement the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. Such governing body shall have the power and authority to provide, either in proceedings already completed or in those instituted after March 9, 1927, that such assessment shall be paid in cash of not less than five nor more than ten equal annual installments. (1923, c. 220, s. 7; C. S., s. 2792(g); 1927, c. 241.)

§ **160-213. Appeal; correction, etc., of assessment; interest; collection.**—If a person assessed is dissatisfied with the amount of the charge, he may give notice of appeal in said proceeding pending before the clerk of superior court as hereinafter provided for. The governing body may correct, cancel or remit any assessment in connection with such improvement. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector or other officer charged with the duty of collecting taxes, and such assessments shall be due and payable on the date on which taxes are payable and shall be collected like other taxes. In the event the governing body authorizes the payment of any assessment by installment, such installments shall bear interest at the rate of six per centum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any person to pay any such installments when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable. (1923, c. 220, s. 8; C. S., s. 2792(h).)

§ **160-214. Limit of assessments; exceptions; transfer to court for trial; appeal to Supreme Court.**—The total value of the benefits assessed against the lots or land situated and located in said assessment district shall not exceed the total net amount of damages to be paid by the municipality to the owner or owners of the land or right condemned, together with the cost of such improvement as estimated by said commissioners. If any party to the proceedings shall be dissatisfied with the report of the commissioners, or the assessment levied by the said governing body [on either benefits or damages], he may file exceptions thereto with the clerk of the superior court within ten days after the filing of said report with said clerk, or in the event the appeal be from the levying of the assessment by said governing body, within ten days after the confirmation of such assessment roll by such governing body, and the issues of fact and law raised before the clerk in the said proceedings and upon the said exceptions shall be transferred to the superior court for trial [before a jury on issues of fact relating either to damages or to benefits] in like manner as provided in the case of other special proceedings pending before the clerk; and the said issues shall be tried at the first term after they are transferred, unless for a good cause shown a trial or hearing of the matter may be continued by the court: Provided, however, that the words in brackets in the preceding sentence shall not apply to the city of Greensboro, or to any city, town or municipality in any of the following counties: Alexander, Buncombe, Cabarrus, Cleveland, Davidson, Forsyth, Halifax, Harnett, Haywood, Hertford, Lincoln, Madison, Mitchell, Moore, Nash, Pender, Pitt, Rockingham, Rutherford, Stanly, Transylvania, Wake and Watauga. From the judgment of the superior court rendered in said proceeding any of the parties may appeal to the Supreme Court, as in other cases pending in the superior court: Provided, that if such municipality, at the time of the appraisal, shall pay into the court the sum appraised by the commissioners as being due any person for land so condemned and taken for public use, then and in that event such municipality may enter, take possession of and hold said lands notwithstanding the pendency of any appeal, and no appeal either to the superior court or to the Supreme Court shall hinder or delay such municipality in proceeding with such proposed improvement. (1923, c. 220, s. 9; C. S., s. 2792(i); 1931, c. 258.)

Editor's Note.—The 1931 amendment inserted the words in brackets and the proviso that it should not apply to the municipalities enumerated.

§ **160-215. Power of courts; practice and procedure.**—In all cases of appraisal under §§ 160-206 to 160-221, where the mode or manner of procedure is not expressly or sufficiently provided for herein, the court before which such proceedings may be pending shall have the power to make all necessary orders and give proper directions to carry into effect the object and intent of said sections, and the practice and procedure in such cases shall conform as nearly as may be to the ordinary practice and procedure in such court. (1923, c. 220, s. 10; C. S., s 2792(j).)

§ **160-216. Change of ownership or transfer of property; effect.**—When any proceedings for appraisal of property or rights under §§ 160-206 to 160-221 shall have been instituted, no change of ownership or transfer of the real estate, or any interest therein, or of the subject matter of the appraisal, or any part thereof, shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made, or attempted to be made. (1923, c. 220, s. 11; C. S., s. 2792(k).)

§ **160-217. Proceedings to perfect title; possession by municipality; parties.**—If at any time after proceedings under §§ 160-206 to 160-221 shall have been instituted it shall be found that the title to any property or right proposed to be condemned, or which has been acquired or condemned, is defective, said municipality may proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made, and at any stage of the new proceeding the court may authorize the municipality, if in possession of said property or rights, to continue in possession of the same, and if not in possession, to take possession and use such property or rights during the pendency and until the final conclusion of such new proceedings, and may stay all actions or proceedings against the municipality on account thereof, and in every case any party interested may conduct the proceedings to a conclusion if the municipality delays or omits to prosecute the same. (1923, c. 220, s. 12; C. S., s. 2792(l).)

§ **160-218. Recovery by municipality if title defective; limit of recovery.**—If the title to any property, rights, privileges or easements condemned in any proceedings instituted under §§ 160-206 to 160-221 shall prove to be defective, such municipality may by action recover of the person or persons who have received compensation for the property or rights so condemned any loss or damage the city may have sustained by reason of said defect of title, not exceeding the amount paid as compensation for the taking of said property or rights. (1923, c. 220, s. 13; C. S., s. 2792(m).)

§ 160-219. Notice served on nonresidents.—Where any notice is required to be given in said proceeding before the court and the person to be notified is a nonresident of the county in which said proceedings are pending, the notice may be served by the sheriff or other lawful officer of any county in which the said person may be, and if the said person is a nonresident of the State, the notice may be served by the publication thereof once a week for four weeks in a newspaper published in such municipality, and the affidavit of the publisher, proprietor or foreman of said newspaper that said notice was so published shall be sufficient prima facie evidence or proof of such publication, and the time of notice shall be counted from the last day on which the notice was inserted in said newspaper. (1923, c. 220, s. 14; C. S., s. 2792(n).)

§ 160-220. Registration of final judgment; evidence; certificate under seal.—A copy of the final judgment of the court, duly certified by its clerk, may be registered in the office of the register of deeds for said county, and said copy so certified, or a copy of the registry of such judgment duly certified by the register of deeds, shall be received as evidence in all courts of the State, and where the said copy is offered in evidence in any court not held in the county in which the judgment is rendered, the certificate shall have affixed the official seal of the certifying officer. (1923, c. 220, s. 15; C. S., s. 2792(o).)

§ 160-221. Pay of appraisal commissioners; taxation as costs.—The commissioners appointed by the clerk of the superior court to make the appraisals provided for herein shall receive compensation at the rate of five dollars ($5.00) per day each, which compensation shall be taxed in the court costs of such proceedings. (1923, c. 220, s. 16; C. S., s. 2792(p).)

Part 3. Streets and Sidewalks.

§ 160-222. Power to make, improve and control.—The governing body of the city shall have power to control, grade, macadamize, cleanse, and pave and repair the streets and sidewalks of the city and make such improvements thereon as it may deem best for the public good, and may provide for and regulate the lighting of the public parks, and regulate, control, license, prohibit, and prevent digging in said streets and sidewalks, or placing therein of pipes, poles, wires, fixtures, and appliances of every kind, whether on, above, or below the surface thereof, and regulate and control the use thereof by persons, animals and vehicles; to prevent, abate, and remove obstructions, encroachments, pollution or litter therein; and shall have under its government, management, and control all parks and squares within or without the city limits established by the governing body for the use of the city except as otherwise provided. (1917, c. 136, sub-ch. 10, s. 1; C. S., s. 2793.)

Cross References.—See §§ 160-54 and 160-78 et seq. As to power of municipal governing body to close streets, etc., see subdivision (17) of § 153-9.

The opening and closing of streets is a governmental function. Bessemer Improvement Co. v. Greensboro, 247 N. C. 549, 101 S. E. (2d) 336 (1958).

Diminution of Access from Change of Grade Is Damnum Absque Injuria.—When a city acts for public convenience under the authority granted it by the legislature and raises or lowers the grade of a street, any diminution of access by an abutting property owner is damnum absque injuria. The abutting property owner can neither prevent the change by injunction nor recover damages for the diminished value of his property, when the work is done in conformity with plans designated to promote public convenience. Thompson v. Seaboard Air Line R. Co., 248 N. C. 577, 104 S. E. (2d) 181 (1958).

Cited in Rhodes v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Presley v. C. M. Allen & Co., 234 N. C. 181, 66 S. E. (2d) 789 (1951); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ **160-223. Increasing width of streets.**—Any incorporated city or town in North Carolina where the State Highway Commission or governing body of any city, town or county has constructed a road or street, or any part of any road or street through such city or town in North Carolina, and the governing body of said city or town desires to increase the width of said road or street or either, or both sides of same, so as to make such road or street conform to such width as the said governing body of said city or town may determine, the governing body of such city or town may increase the width of such road or street, on either side of same, such number of feet as may be necessary and may be determined by the governing body of such city or town: Provided, however, that the expense and cost of such increase in width to such road or street shall be borne by the city or town through which such road or street may run and without any expense or obligation, in any way, to the State Highway Commission. (1925, c. 71, s. 1; 1957, c. 65, s. 11.)

§ **160-224. Right of eminent domain.**—Whenever the governing body of any city or town in North Carolina deems it necessary to extend the width of any road or street in such city or town, and it becomes necessary for such governing body of such city or town to exercise the right of eminent domain, such governing body of such city or town shall have the power to exercise the right of eminent domain to the extent that the same is given such city or town, or governing body of such city or town, in the charter and amendments to the charter of such city or town or under the general law pertaining to such matters. (1925, c. 71, s. 2.)

§ **160-225. Interference with Highway Commission.**—Nothing in §§ 160-223 and 160-224 shall authorize the governing body of any city or town to interfere with the rights and privileges of the State Highway Commission when such city or town undertakes to exercise any of the privileges by such sections granted. (1925, c. 71, s. 3; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Part 3A. Subdivisions.

§ **160-226. Municipal legislative body as platting authority.**—The legislative body of any incorporated city or town is hereby authorized to enact an ordinance regulating the platting and recording of any subdivision of land as defined by this part lying within the municipality or within one mile in all directions of its corporate limits and not located in any other municipality. In the event of land lying outside a municipality and lying within a distance of one mile of more than one municipality, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of each such municipality. (1955, c. 1334, s. 1.)

Cross Reference.—As to control corners in real estate developments, see §§ 39-32.1 through 39-32.4.

Editor's Note.—Former §§ 160-226 and 160-227, derived from Public Laws 1929, c. 186, were repealed by the 1955 act which inserted this and the eight following sections.

Cited in Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ **160-226.1. Procedure for adopting subdivision ordinance.**—Before the legislative body of any municipality shall adopt a subdivision control ordinance or any amendment thereto under the provisions of this part, the legislative body shall hold a public hearing on the proposed ordinance. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in such municipality, or if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time, or posted, not less than fifteen days nor more than twenty-five days prior to the date fixed for said hearing. (1955, c. 1334, s. 1.)

§ **160-226.2. Procedure for filing plat.**—If the legislative body of a municipality adopts an ordinance regulating the subdivision of land as authorized herein, no subdivision plat shall be filed or recorded until it shall have been submitted to and approved by said legislative body and such approval entered in writing on the plat by the city or town clerk provided a copy of such ordinance shall be filed with the register of deeds of the county or counties in which the municipality is situated. The register of deeds upon receipt of such ordinance shall not thereafter file or record a plat of a subdivision of land located within the territorial jurisdiction of such municipal legislative body as defined herein without the approval of such plat by said legislative body as required in this part. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the territorial jurisdiction of any municipality as defined herein. No clerk of superior court shall order or direct the recording of a plat where such recording would be in conflict with this section. (1955, c. 1334, s. 1.)

Local Modification.—Harnett: 1963, c. 896, s. 2.

§ **160-226.3. Subdivision regulations.**—Prior to exercising the powers granted to it by this part, the municipal legislative body shall by ordinance adopted pursuant to this part adopt regulations governing the subdivision of land within its platting jurisdiction as defined in § 160-226. Such ordinance shall require that at least a preliminary plan of every proposed subdivision shall be submitted for study recommendation and tentative approval to the legislative body or to a planning board created and appointed under the authority of §§ 160-22 to 160-24 of the General Statutes or other similar statutory authority.

Such ordinance may provide for the orderly development of the municipality and its environs; for the coordination of streets within proposed subdivisions with existing or planned streets or with other public facilities; for the dedication or reservations of rights of way or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding, and which shall create conditions essential to public health, safety, and general welfare.

Such ordinance may include requirements for the final plat to show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

Such ordinance may provide for the more orderly development of subdivisions within the corporate limits by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with such requirements, the ordinance may provide for the posting of bond or such other method as shall offer guarantee of compliance. (1955, c. 1334, s. 1; 1961, c. 1168.)

Editor's Note.—The 1961 amendment added the last paragraph.

§ **160-226.4. Effect of plat approval on status of dedications.**—The approval of a plat by the legislative body shall not be deemed to constitute or effect the acceptance by the municipality or public of the dedication of any street or other ground, public utility line, or other public facility shown upon the plat. (1955, c. 1334, s. 1.)

§ **160-226.5. Penalties for transferring lots in unapproved subdivisions.**—If the legislative body of a municipality adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the platting jurisdiction granted to the municipality by

§ 160-226, thereafter transfers or sells such land by reference to a plat showing a subdivision of such land before such plat has been approved by said legislative body and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor, and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. Said municipality, through its city attorney or other official designated by its local legislative body, may enjoin such transfer or sale by action for injunction. (1955, c. 1334, s. 1.)

§ **160-226.6. Definitions.**—For the purpose of this part, the following definition shall apply:

Subdivision.—A "subdivision" shall include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this part:

(1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulation;

(2) The division of land into parcels greater than five acres where no street right of way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets;

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations. (1955, c. 1334, s. 1.)

§ **160-227. Powers granted herein supplementary.**—The powers granted to municipalities by this part shall be deemed supplementary to any powers heretofore or hereafter granted in their charters or by local statute for the same or a similar purpose, and in any case where the provisions of this part conflict with or are different from such provisions of any charter or local statute, the legislative body of the municipality may in its discretion proceed in accordance with the provisions of such charter or local statute, or, as an alternative method, in accordance with the provisions of this part. (1955, c. 1334, s. 1.)

§ **160-227.1. Counties exempt from part.**—Alexander, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Caldwell, Catawba, Cleveland, except the city of Shelby, Columbus, Cumberland, Dare, Davie, Duplin, Forsyth, Franklin, Granville, except the city of Oxford, Greene, Hoke, except for the town of Raeford, Jones, McDowell, Mecklenburg, except the town of Davidson, Montgomery, Northampton, Onslow, Pender, Polk, Rockingham, Stokes, Surry, Warren, Watauga, Wayne and Yadkin counties are hereby exempt from the provisions of this part. (1955, c. 1334, s. 2; 1957, cc. 718, 964; c. 1455, s. 8½; 1959, cc. 185, 502; c. 824, s. 2; cc. 834, 930; 1961, cc. 54, 180, 425, 539, 690, 857, 877, 899, 913, 942; 1963, cc. 57, 594, 740, 792; c. 896, s. 1.)

Local Modification.—Town of Elkin: 1957, c. 127; town of Mount Airy: 1963, c. 120.

Editor's Note.—The first 1957 amendment inserted after "Mecklenburg" the words "except the town of Davidson." The second 1957 amendment deleted "Guilford" from the list of counties. And the third 1957 amendment inserted "Cumberland" in the list.

The first, third, fourth and fifth 1959 amendments deleted "Beaufort," "Scotland," "Transylvania" and "Rowan," respectively, from the list of counties. The second 1959 amendment inserted after "Cleveland" the words "except the city of Shelby."

The first 1961 amendment deleted "Macon" from the list of counties.

The second 1961 amendment inserted after

"Hoke" the words "except for the town of Raeford."

The third 1961 amendment inserted after affected Person County (eliminated by the fourth 1963 amendment).

The fourth 1961 amendment inserted "except the city of Oxford" immediately following "Granville."

The fifth 1961 amendment deleted "Martin" from the list of counties.

The sixth to the tenth 1961 amendments deleted "Richmond," "Halifax," "Chowan," "New Hanover" and "Lenoir," respectively, from the list.

The first, second, third and fifth 1963 amendments deleted "Johnston," "Lee," "Durham" and "Harnett," respectively, from the list of counties.

The fourth 1963 amendment deleted a provision exempting Person County except for the city of Roxboro.

Part 4. Markets.

§ **160-228. Power to establish and control.**—The governing body of the city shall have power to provide for the establishment, maintenance, and regulation of open-air or enclosed markets and slaughter places; may prescribe the time and place of sale of fresh meats, fish, and other marketable products therein; may rent the stalls in such manner and at such prices as it may deem best; may appoint a keeper of the market or other persons, who may summarily condemn all unsound products offered for sale in the city for food, and cause the same to be removed at the expense of the person offering it for sale. (1917, c. 13, sub-ch. 12, s. 1; C. S., s. 2794.)

Cross References.—See § 160-53. As to establishment and maintenance of market house in co-operation with county, see § 160-167 et seq.

Part 5. Protection of Public Health.

§ **160-229. Ordinances for protection of health; contracts for medical treatment and hospitalization of poor.**—The governing body of cities is hereby given, within the city limits, all the power and authority that is now or may hereafter be given by law to the county health officer or county physician, and such further powers and authority as will best preserve the health of the citizens. The governing body is hereby given power to make such rules and regulations, not inconsistent with the Constitution and laws of the State, for the preservation of the health of the inhabitants of the city, as to them may seem right and proper.

The governing body of any city or town, when deemed for the best interest of the city or town, is hereby given authority to contract for periods not to exceed thirty years with public or private hospitals or institutions within or without the city or town for the medical treatment and hospitalization of the sick and afflicted poor of the city or town upon such terms and conditions as may be agreed; provided, that the annual payments required under such contract shall not be in excess of ten thousand dollars ($10,000.00). The full faith and credit of each city or town shall be deemed to be pledged for the payment of the amounts due under said contracts. The contracts provided for in this paragraph and the appropriations and taxes therefor are hereby declared to be for necessary expenses within the meaning of the Constitution of North Carolina and shall be valid and binding without a vote of the majority of the qualified voters of each city and town and are hereby expressly exempted from any limitation, restriction or provisions contained in the County Fiscal Control Act and acts amendatory thereof as it may be applicable to cities or towns by virtue of § 160-409. No limitation, restriction or provision contained in any general, special, private or public-local law or charter of any city or town relating to the execution of contracts and the appropriation of money and levying of taxes therefor shall apply to the contracts authorized and executed under this paragraph: Provided, that the town of Lincolnton shall not enter into any such contract except after a public hearing at the county courthouse in Lincoln County, notice of which hearing shall be published for two successive weeks in a newspaper published in the county. The provisions of this paragraph shall not apply to the municipalities of Asheville, Charlotte, East Spencer, Gibsonville, Greensboro, Hamlet, High Point, Jamestown, Leaksville, Madison, Rockingham, Rocky Mount, Salisbury, Spencer, Tarboro and Wilmington. This paragraph shall not apply to the city of High Point in Guilford County; to the city of Elizabeth City in Pasquotank County; nor to the counties of Beaufort, Camden and Lee or any city or town therein; nor to any city or town in the counties of Ashe, Avery, Columbus, Davidson, Durham, Gates, Jackson, Martin and Rockingham, save and except the city of Reidsville; nor to the counties of Alexander, Ashe, Brunswick, Catawba, Clay, Cumberland, Davie, Edgecombe, Forsyth, Gaston, Halifax, Harnett, Haywood, Henderson, Iredell, Johnston, Jones, Lincoln, Macon, Montgomery, Moore, Pasquotank, Pitt, Robeson, Rowan, Stanly, Surry, Transylvania, Union, Vance, Warren, Washington, Wilkes and Yadkin. Before this paragraph shall apply to any city or town in Catawba County it must be submitted to a vote of the people of said Catawba County. (1917, c. 136, sub-ch. 5, s. 4; C. S., s. 2795; 1935, c. 64; 1943, c. 215; 1947, cc. 101, 160.)

Cross References.—As to local health departments generally, see § 130-13 et seq. As to authority of certain cities to provide medical care for sick and afflicted poor, see §§ 153-176.1 to 153-176.4.

Editor's Note.—The 1935 amendment added the second paragraph, and the 1943 amendment made it applicable to the city of Reidsville.

The first 1947 amendment struck out "Edenton" from the list of municipalities in the third sentence from the end of the section. The second 1947 amendment struck out "Sampson" from the list of counties in the next to last sentence.

Taxes under This Section for Necessary Expense.—In accordance with the provisions of the last paragraph of this section the commissioners of a city proposed to enter into a contract with a public hospital providing for the payment by the city of the sum of $10,000 a year for thirty years, in consideration of the agreement of the hospital to give medical care and hospitalization to the indigent sick and afflicted poor of the city, and to levy a tax to raise revenue sufficient to meet such payments. It was held that the proposed tax was for a necessary municipal expense, and the approval of the qualified voters of the city was not a prerequisite to the validity of the tax. Martin v. Raleigh, 208 N. C. 369, 180 S. E. 786 (1935).

Applied in Rex Hospital v. Wake County Board of Com'rs, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

Cited in Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945); Board of Managers of James Walker Memorial Hospital v. Wilmington, 237 N. C. 179, 74 S. E. (2d) 749 (1953).

§ 160-230. Establish hospitals, pesthouses, quarantine, etc.—The governing body may acquire, establish, and maintain a hospital or hospitals, or pesthouses, slaughterhouses, rendering plants, incinerators and crematories in the city limits or within three miles thereof; may stop, detain, examine, or keep in a pesthouse or house of detention persons having or suspected of having any infectious, contagious, or other communicable disease; may quarantine the city or any part thereof; may cause all persons in the city limits to be vaccinated; may, without incurring liabilities to the owner, remove, fumigate, or destroy furniture, bedding, clothing, or other property which may be found to be tainted or infected with any contagious or infectious disease, and may do all other proper and reasonable things to prevent or stamp out any contagious or infectious disease, and to preserve better the health of the citizens. All expenses incurred by the city in disinfecting or caring for any person or persons, by authority of this section, may be recovered by it from the person, persons, or property cared for; and when expense is incurred in caring for property, the same shall become a lien on such property. Any person who shall attempt by force, or by threat of violence, to prevent his removal or that of any other persons to the pesthouse, house of detention, or hospital, or who shall in any way interfere with any officer while performing any of the duties allowed by this article, shall be guilty of a misdemeanor. The governing body of any municipality, in order to provide for the management of a municipally owned hospital may lease such a hospital to a local, non-stock, non-profit corporation or association chartered to maintain and operate a community-type hospital upon such terms as the governing bodies of the municipality and of the hospital, corporation or association may agree, for a term of years, with or without consideration, and in the sound discretion of the governing body of said municipality. (1917, c. 136, sub-ch. 5, s. 4; C. S., s. 2796; Ex. Sess. 1938, c. 2, s. 13.)

Cross Reference.—As to joint county and municipal tuberculosis hospitals, see § 131-46 et seq.

Editor's Note.—The 1938 amendment added the last sentence.

Chapter 1081 of Session Laws 1949, which amended §§ 160-417 through 160-421 and struck out § 160-423, re-enacted all of chapter 2 of the Public Laws of 1938, as thereby amended.

Cited in Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ 160-231. Elect health officer.—The governing body of any city may elect a health officer and create such other offices and employments as to them may seem right and proper, and fill the same and fix their compensation. (1917, c. 136, sub-ch. 5, s. 4; C. S., s. 2797.)

Cross Reference.—As to local health departments generally, see § 130-13 et seq.

§ 160-232. Regulate the management of hospitals.—The governing body is hereby empowered to make rules and regulations for the management and conduct of all hospitals and sanatoriums which may have for treatment any patient afflicted with any infectious, contagious, or other communicable disease, and prescribe penalties for any violation of same. Any person violating any rule or regulation of the governing body shall be guilty of a misdemeanor, and upon conviction, except as herein otherwise provided, shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1917, c. 136, sub-ch. 5, s. 5; C. S., s. 2798.)

§ 160-233. Provide for removal of garbage.—The governing body may by ordinance provide for the removal, by wagon or carts, of all garbage, slops, and trash from the city; and when the same is not removed by the private individual in obedience to such ordinance, may require the wagons or carts to visit the houses used as residences, stores, and other places of habitation in the city, and also may require all owners or occupants of such houses who fail to remove such garbage or trash from their premises to have the garbage, slops, and trash ready and in convenient places and receptacles, and may charge for such removal the actual expense thereof. (1917, c. 136, sub-ch. 7, s. 3; C. S., s. 2799.)

Liability Growing from Power.—A city in exercising the governmental duty passed in accordance with this section is not liable in a civil action to one injured by the negligence of its drivers of the carts or wagons when so engaged, there being no provision of law conferring such right.

The fact that the city is permitted to charge the cost of such service does not change its act from a governmental function to a business or profit, or affect its liability for the negligent acts of its agents or employees therein. James v. Charlotte, 183 N. C. 630, 112 S. E. 423 (1922).

§ 160-234. Abate or remedy menaces to health.—The governing body, or officer or officers who may be designated for this purpose by the governing body, shall have power summarily to remove, abate, or remedy, or cause to be removed, abated, or remedied, everything in the city limits, or within a mile of such limits, which is dangerous or prejudicial to the public health; and the expense of such action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes. (1917, c. 136, sub-ch. 7, s. 4; C. S., s. 2800.)

Cross References.—As to power to abate nuisances, see § 160-55. As to power of local health director to abate nuisances, see § 130-20.

Quoted in Rhyne v. Mount Holly, 251 N. C. 521, 112 S. E. (2d) 40 (1960).

Cited in Dare County v. Mater, 235 N. C. 179, 69 S. E. (2d) 244 (1952); Smith v. Winston-Salem, 247 N. C. 349, 100 S. E. (2d) 835 (1957).

Part 6. Fire Protection.

§ 160-235. Establish and maintain fire department.—The governing body shall have power to provide for the organization, equipment, maintenance and government of fire companies and a fire department; and, in its discretion, may provide for a paid fire department, and for this purpose may create any offices and employments and fix their compensation as to the governing body may seem right and proper. (1917, c. 136, sub-ch. 8, s. 1; C. S., s. 2801.)

Cross References.—As to power to provide for the relief of indigent and helpless members of the fire department, see § 160-200, subdivision (25). As to election, compensation, duties, etc., of chief of fire department, see § 160-115 et seq. As to control of fire department under Plan C, see § 160-330, subsection (b).

The organization and operation of a fire department is a governmental, not a private or proprietary function. Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

Liability for Failure to Furnish.—The maintenance of a fire department for extinguishing fire without cost to the property owner is a governmental function, and there is no liability for failure to provide adequate pressure or service in extinguishing a fire. Howland v. Asheville, 174 N. C. 749, 94 S. E. 524 (1917).

Liability for Negligence.—A city, in the absence of statutory provision to the contrary, is not liable for any damage occasioned by the negligence of its fire department. Mack v. City Water Works, 181 N. C. 383, 107 S. E. 244 (1921). The extinguishment of fires is a function which a municipal corporation undertakes in its governmental capacity, and in connection with which, in the absence of statutory provision to the contrary, it incurs no civil liability, either for inadequacy in equipment or for the negligence of its employees. See Seales v. Winston-Salem, 189 N. C. 469, 127 S. E. 543 (1925); Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169 (1925).

Liability for Injuries to Firemen.—A city is not liable to firemen for injuries sustained in the performance of their duties, although the appliances used were defective, and known to be defective, by the city, for the maintenance of a fire department is a governmental function. Peterson v. Wilmington, 130 N. C. 76, 40 S. E. 853 (1902).

§ 160-236. Establish fire limits.—The governing body may establish and maintain fire limits in the city, in which it shall be unlawful to erect, alter, and repair wooden buildings or structures or additions thereto; it may also prohibit the removal of wooden buildings or structures of any kind into such limits, or from one place to another within the limits, and make such other regulations as may be deemed best for the prevention and extinguishment of fires.

Notwithstanding any other provision of law, the governing body of any municipality which has established primary fire limits which include the principal business portion of such municipality, is hereby authorized and may, in its discretion, establish and define one or more separate areas within the municipality as secondary fire limits, in which alterations, repairs and additions to wooden buildings and structures located therein at the time such limits are established, may be permitted under rules and regulations governing buildings in such municipality. (1917, c. 136, sub-ch. 8, s. 2; C. S., s. 2802; 1961, c. 240.)

Cross Reference.—As to punishment for failure to establish fire limits, see § 160-125.

Editor's Note.—The 1961 amendment added the second paragraph.

§ 160-237. Regulate construction of buildings.—The governing body may make rules and regulations governing the erection and construction of buildings in the city so as to make them as safe as possible from fire. (1917, c. 136, sub-ch. 8, s. 3; C. S., s. 2803.)

Cross Reference.—See § 160-126 et seq.

§ 160-238. Fire protection for property outside city limits; injury to employee of fire department.—The governing body may provide, install, and maintain water mains, pipes, hydrants, and buildings and equipment, either inside or outside of the city limits, for protection against fire of property outside of the city limits, and within such area as the governing body may determine, not exceeding a boundary of two miles from the city limits, under such terms and conditions as the governing body may prescribe. Such governing body is hereby authorized to agree to furnish and to furnish protection against fire of property within an area of not more than twelve miles from the city limits upon such terms as such governing body may determine.

Any employee of a municipal fire department, while engaged in any duty or activity in connection with the provisions of this section, or pursuant to orders or instructions from his officers or supervisors, shall have the same rights under the Workmen's Compensation Law, and shall be entitled to all such other rights, privileges, exemptions and immunities, as if such duty or activity were performed within the corporate limits of the municipality by which he was employed; and all such employees shall be entitled to all such rights, privileges, immunities and exemptions, irrespective of where such duties or activities are performed. In authorizing or permitting its fire department to answer fire calls outside the twelve-mile limit, and in answering such calls, the municipality and its employees in the fire department shall be considered as acting in a governmental capacity. (1919, c. 244; C. S., s. 2804; 1941, c. 188; 1947, c. 669; 1949, c. 89.)

Editor's Note.—The 1941 amendment added the second sentence of the first paragraph.

The 1947 amendment added the second paragraph, and the 1949 amendment rewrote the paragraph.

For comment on the 1941 amendment, see 19 N. C. Law Rev. 498.

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958).

Part 7. Sewerage.

§ 160-239. Establish and maintain sewerage system.—The governing body shall have power to acquire, provide, construct, establish, maintain and operate a system of sewerage for the city, and protect and regulate the same by adequate rules and regulations; and if it shall be necessary in obtaining proper outlets to such system to extend the same beyond the corporate limits, the governing body may condemn a right of way or rights of way to and for such outlets, and the proceedings for such condemnation shall be as herein provided for opening new streets and other purposes. It is the intention of this subchapter that the powers herein granted to municipalities shall not repeal any special or local law or affect any proceedings under any special or local law relative to providing, constructing, establishing, maintaining or operating any system of sewerage in any municipality, or for the raising of funds therefor, but shall be deemed to be additional and independent legislation for such purposes and to provide an alternative method of procedure for such purposes, and supplementary to those powers granted municipalities in their charters. In any case in which the provisions of this subchapter are in conflict with the provision of any local statute or charter, then the governing body of any such municipality may, in its discretion, proceed in accordance with the provisions of such local statute or charter, or as an alternative method of procedure in accordance with the provisions of this subchapter. (1907, c. 136, sub-ch. 7, s. 1; C. S., s. 2805; 1923, c. 166, s. 1.)

Cross References.—As to condemnation proceedings, see § 160-205. As to control of sewerage system under Plan C, see § 160-330, subsection (e). As to water and sewer authorities, see § 162A-1 et seq.

Editor's Note.—All of this section except the first sentence was added by the amendment of 1923.

"These sections provide in a general way for the construction of a sewerage system in cities and towns, and the amending statute adds an alternative method of procedure to this general law and to any similar provision in special charters. The plan devised in the amending statute is for ascertaining the actual expense of constructing a sewerage system and assessing the same against the abutting property according to the front-foot rule. The method of procedure is given in detail, as to the ordinance or resolution by the governing body, publication of notice, assessment against property and a hearing thereon with right of appeal, and how the assessments are to be collected. The plan is somewhat similar to that contained in the local improvements statutes, § 160-78 et seq., except that this contemplates the payment of the whole expense by assessments instead of only a part thereof, as in case of local improvements. The plan is only alternative and supplementary, and is not intended to change any other method now provided for in general laws or special charters." 1 N. C. Law Rev. 274.

Effect on Prior Rights.—The fact that the General Assembly has authorized an alternative method of financing an installation of sewerage does not in anywise militate against the plan the town may adopt. This section, while giving towns the privilege of adopting a different system, does not deprive them of the power to proceed in the manner which its authorities see fit to adopt. Indeed, the statute is careful to provide that it shall not repeal any other method of proceeding that has been authorized or adopted for providing sewerage. McNeill v. Whiteville, 186 N. C. 163, 119 S. E. 6 (1923).

When Extensions May be Made.—Municipalities have legislative permission to extend their sewer and water lines beyond corporate boundaries. Such extensions may be made either because necessary to the effective operation of the improvement within the city, or to provide services for a profit beyond the corporate limits. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Extension for Profit Requires Vote.—A municipality has the power to expend funds for the construction and operation of water and sewer facilities without a vote when such facilities are for the benefit of the citizens of the municipality, but extension of such facilities outside its corporate limits for the purpose of profit is a proprietary function requiring a vote of its citizens. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Liable for Maintenance of Nuisance.—In one case it was held that the maintenance of a free public sewer system by a city is an exercise of its police power for the public benefit, so that a city would not be liable for the death of a citizen from illness caused by the pollution of a stream by the sewer which emptied into it. Metz v. Asheville, 150 N. C. 748, 64 S. E. 881, 22 L. R. A. (N. S.) 940 (1909).

But this case seems to be contrary to the weight of authority both in North Carolina and elsewhere, and the rule sustained by the greater number of cases is that a municipal corporation, empowered to construct and maintain a sewerage system, may not exercise its power in such a way as to create a private nuisance without making compensation for the injury inflicted or being liable in damages therefor or to equitable restraint in a proper case, and it is a nuisance to pollute a stream by emptying sewage therein. Moser v. Burlington, 162 N. C. 141, 78 S. E. 74 (1913). It should be observed, however, that this case is concerned with damage to property whereas the Metz Case was concerned with injury to health.

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958).

Quoted in Guilford Realty & Ins. Co. v. Blythe Bros. Co., 260 N. C. 69, 131 S. E. (2d) 900 (1963).

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940).

§ **160-240. Require connections to be made.**—The governing body may require all owners of improved property which may be located upon or near any line of such system of sewerage to connect wtih such sewerage all water closets, bathtubs, lavatories, sinks, or drains upon their respective properties or premises, so that their contents may be made to empty into such sewer, and fix charges for such connections. (1917, c. 136, sub-ch. 7, s. 2; C. S., s. 2806.)

Section Does Not Apply to Property Located Outside City.—A municipality is not authorized by this section to compel owners of improved property located outside the city, but which may be located upon or near one of its sewer lines, or a line which empties into the city's sewerage system, to connect with the sewer line. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949); Smith v. Winston-Salem, 247 N. C. 349, 100 S. E. (2d) 835 (1957). See § 160-256 and note.

§ **160-241. Order for construction or extension of system; assessment of cost; payment of assessment.**—When it is proposed by any municipality to provide, construct and establish a system of sewerage or waterworks, or to provide for the extension of any such system, an order or resolution of the governing body of such municipality at a regular or special meeting shall be made stating generally, or as nearly as may be, the nature of the proposed improvement. In such order or resolution such governing body may provide that the actual cost of the establishment and construction of such sewerage or waterworks system, or any extension thereof, shall be assessed upon the lots and parcels of land abutting directly on the lateral mains of such sewerage or waterworks system, or extension thereof, according to the extent of the respective frontage thereon, by an equal rate per foot of such frontage. Such governing body may provide in such order or resolution that the assessments to be levied in connection with such work may be paid in equal installments covering a period of not exceeding ten years. Such order or resolutions shall designate by a general description the improvement to be made, and the street or streets, or part or parts thereof, whereon the work is to be affected and the cost thereof to be assessed upon all abutting property and the terms and manner of payment. Such order or resolution after its passage shall be published in a newspaper published in such municipality, or if there be no such newspaper, such order or resolution shall be posted in three public places in such municipality for at least five days. (1923, c. 166, s. 2; C. S., s. 2806(a); 1955, c. 1177, s. 1.)

Local Modification.—City of High Point: 1963, c. 1103; city of Raleigh: 1961, c. 895; town of Chapel Hill: 1963, c. 385; town of Edenton: 1961, c. 369; town of Kure Beach: 1963, c. 972.

Editor's Note.—The 1955 amendment made this section applicable to waterworks systems, and substituted "ten years" for "five years" at the end of the third sentence.

Cited in In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

§ **160-242. Ascertainment of cost; assessment.**—Upon the completion of the construction and establishment of any such sewerage or waterworks system, or of any such extension, the governing body shall compute and ascertain the total cost thereof. The governing body shall thereupon make an assessment of such total cost, and for that purpose shall make out an assessment roll, in which must be entered the names of the persons assessed as far as can be ascertained, and the amount assessed against them respectively, with a brief description of the lots or parcels of land assessed. (1923, c. 166, s. 3; C. S., s. 2806(b); 1955, c. 1177, s. 2.)

Editor's Note.—The 1955 amendment inserted "or waterworks" after "sewerage" in the middle of the first sentence.

§ **160-243. Deposit for inspection; publication of completion; time for hearing objections.**—Immediately after such assessment roll has been completed, the governing body shall cause it to be deposited in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published in the same manner as the order or resolution authorizing such work, a notice of the completion of the assessment roll, setting forth a description in general terms of the improvement, and the time fixed for the meeting of the governing body for a hearing of allegations and objections in respect of the special assessment, such meeting not to be earlier than ten days from the first publication or posting of said notice. (1923, c. 166, s. 4; C. S., s. 2806(c).)

§ **160-244. Hearing on objections; action; entry of confirmation; lien of assessment; copy of roll to tax collector.**—At the time appointed for that purpose, or at some other time to which it may adjourn, the governing body, or a committee thereof, must hear the allegations and objections of all persons interested, who appear and make proof in relation thereto. The governing body may thereupon correct such assessment roll, either confirm the same or may set it aside, and provide for a new assessment. Whenever the governing body shall confirm an assessment for such a local improvement, the clerk of the municipality shall enter on the minutes of the governing body the date, hour and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the real property against which the same are assessed, superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same must be delivered to the tax collector, or other officer charged with the duty of collecting taxes. (1923, c. 166, s. 5; C. S., s. 2806(d).)

§ **160-245. Notice of appeal; service of statement; no stay of work; trial of appeal.**—If a person assessed is dissatisfied with the amount of the charge, he may give notice within ten days after such confirmation that he takes an appeal to the next term of the superior court of the county in which the municipality is located, and shall within five days thereafter serve a statement of facts upon which he bases his appeal; but the appeal shall not delay or stop the improvements. The appeal shall be tried at the term of court as other actions at law. (1923, c. 166, s. 6; C. S., s. 2806(e).)

§ 160-246. Correction, etc., of assessment; interest and penalties; power to set aside assessment.—The governing body may correct, cancel or remit any assessment for a local improvement, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. (1923, c. 166, s. 7; C. S., s. 2806(f).)

Editor's Note.—See note under § 160-90.

§ 160-247. Cash payment; installment payments; rate of interest; sale of property.—In the event such governing body of such municipality shall provide that said assessment may be paid in equal annual installments, then and in that event the property owners shall have the option and privilege of paying for the improvement as hereinbefore provided for, in cash, or if they should elect and give notice of the fact in writing to the municipality within thirty days after the notice mentioned in the next succeeding section, they shall have the option and privilege of paying the assessment in not less than the number of equal annual installments as may have been determined by the governing body in the original order or resolution authorizing the improvement. Such installments shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable, and such property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by the payment of the principal and the interest accrued to that date. (1923, c. 166, s. 8; C. S., s. 2806(g).)

§ 160-248. Notice for payment of assessment; interest for nonpayment; maturity of installments; penalties.—After the expiration of twenty days from the confirmation of an assessment roll the tax collector, or such other officer of the municipality as the governing body may direct so to do, shall cause to be published in a newspaper, or, if there is no such newspaper, shall cause to be posted in at least three public places therein a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of thirty days from the first publication of the notice, without any addition. In the event the assessment be not paid within such time the same shall bear interest at the rate of six per cent per annum from the date of the confirmation of the assessment roll and shall become due and payable on the date on which taxes are payable: Provided, that when an assessment is divided into installments, one installment shall become due and payable each year on the date on which taxes are due and payable. If any assessment or installment thereof is not paid when due, it shall be subject to the same penalties as are now prescribed for unpaid taxes, in addition to the interest herein provided for. (1923, c. 166, s. 9; C. S., s. 2806(h).)

§ 160-249. Sewerage charges and penalties; no lien acquired; billing and collecting agent for sewerage service where municipalities do not also provide water service.—The governing body of any municipality, maintaining and operating a system of sewerage, including sewerage treatment works, if any, is hereby authorized to charge for sewerage service, to determine and fix a schedule of charges to be made for such service, to fix the time and manner in which such sewerage service charges shall be due and payable and to fix a penalty for the nonpayment of the same when due. In no cases shall the charges, rents or penalties be a lien upon the property served and in cases where the services is rendered to a tenant and the tenant removes from the premises, the municipality shall not charge against the owner thereof the service charges or penalties for said service: Provided, however, that for sewerage service supplied outside of the corporate limits of the city, the governing body, board or body having such sewerage system in charge may fix a different schedule of rates from that fixed for such service rendered within the corporate limits, with the same exemption from liability by city or town as is contained in § 160-255.

The governing body of any municipality which maintains and operates a system of sewerage but does not maintain and operate a water distribution system is hereby authorized to arrange with the owner or operator of any water distribution system supplying water to the owner, lessee or tenant of real property which is served by such sewerage system for such owner or operator to act as the billing and collecting agent of the municipality for any charges, rents or penalties imposed by the municipality for the services provided by such sewerage system, and any such owner or operator is hereby authorized to act as the billing and collecting agent of the municipality for such purpose. Any such owner or operator shall, if requested by the municipality, furnish to the municipality copies of such regular periodic meter reading and water consumption record and other pertinent data as the municipality may require to do its own billing and collecting. The municipality shall pay to such owner or operator the reasonable additional expenses incurred by such owner or operator in rendering such services to the municipality. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074.)

Local Modification.—Mecklenburg, Transylvania: 1933, c. 322, s. 1; Morehead City: 1955, c. 517; town of Rutherfordton: 1961, c. 785, s. 1½; town of Spindale: 1961, c. 785, s. 1.

Editor's Note.—The 1961 amendment added the second paragraph.

Charges for Sewer Service Outside Corporate Limits.—A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949). See note to § 160-255.

Applied in Smith v. Winston-Salem, 247 N. C. 349, 100 S. E. (2d) 835 (1957).

§ **160-250. Joint construction, operation, etc., of sewerage works by adjacent municipal corporations.**—Two or more adjoining or adjacent municipal corporations shall have authority as hereinafter provided and set forth, by the adoption of resolutions to be passed by the governing body of each of said municipal corporations, to acquire, construct, improve, maintain and operate jointly, either within or without their corporate limits, sewerage works, including sewage treatment facilities, or any integral part of such works. In order to render more effectual the exercise of the authority herein granted, such municipal corporations may enter into any and all contracts which may be appropriate to that end, among or between themselves, or with other parties. (1939, c. 205, s. 1.)

§ **160-251. Power of corporations to issue bonds.**—Municipal corporations so determining upon such sewerage works are hereby granted the same authority to issue bonds for the acquisition, construction and improvement of such works as is now given to any municipal corporation under the general laws of North Carolina, and particularly under the Municipal Finance Act, as amended. (1939, c. 205, s. 2.)

Cross Reference.—As to issuance of bonds under the Municipal Finance Act, see § 160-377 et seq.

§ **160-252. Apportionment of cost; establishment of charges.**—The cost of any such joint acquisition, construction, improvement, maintenance and operation shall be apportioned between or among the participating municipal corporations in a manner to be by them agreed upon and determined. In order to pay such cost, such adjoining or adjacent municipal corporation may, by agreement between or among themselves, fix and establish reasonable charges for the use of such sewerage works. Any person, firm or corporation or other municipal corporation not participating in such joint construction and operation, who or which are living or are located outside of the corporate limits of such municipal corporations and desire to use sewerage works, may be charged a reasonably higher rate for the use of such said works than that charged the users of the same who are living or located within the corporate limits of said participating municipal corporations. (1939, c. 205, s. 3.)

§ **160-253. Charges declared lien upon property.**—The charges made for the use of said works shall be a lien upon the property served, and if any such charge shall not be paid within fifteen days after the same becomes payable, suit may be brought therefor in the name of the municipal corporation in which the property served is located, or the property, subject to the lien thereof, may be sold by the municipal corporation under the same rules and regulations, rights of redemption and savings, as are now or may hereafter be prescribed by law for the sale of land for unpaid taxes. Such municipal corporations shall have the right to establish reasonable rules and regulations for the use of said sewerage works and the collection of charges therefor, and said municipal corporations, through their officers or agents, are hereby authorized and empowered, in accordance with such reasonable regulations, to enter upon the premises of any person, firm or corporation using said sewerage works and failing to pay the charges therefor, and to disconnect the sewer line of such person, firm, or corporation from the public sewer line or disposal plant; and any person, firm or corporation who shall connect with such public sewer line or disposal plant, or reconnect his or their property therewith, without a permit from the officer authorized to give the same, shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of any court of competent jurisdiction. (1939, c. 205, s. 4.)

§ **160-254. Law applicable to joint works initiated or completed prior to effective date.**—The authority to issue bonds for the purpose of financing in whole or in part works of the type herein made provision for, and the authority to perform any other acts authorized hereunder, may be exercised in connection with sewerage works the construction of which may have been jointly initiated or completed by two or more adjoining or adjacent municipal corporations prior to the effective date of this act; and all acts done and proceedings had in relation to such joint construction of such works, and all acts, resolutions or ordinances hertofore performed, adopted or enacted in connection with the authorization of issuance of bonds to finance such joint construction, if such bonds are otherwise authorized or issued under and in substantial compliance with any applicable general law of North Carolina, are hereby ratified, validated and confirmed. (1939, c. 205, s. 5; effective March 28, 1939.)

Part 8. Light, Water, Sewer and Gas Systems.

§ **160-255. Authority to acquire and maintain light, water, sewer and gas systems.**—A municipality may own and maintain its own light, water, sewer and gas systems to furnish services to the municipality and its citizens, and to any person, firm or corporation desiring the same outside the corporate limits where the service can be made available by the municipality, but in no case shall a municipality be liable for damages to those outside the corporate limits for failure to furnish light, water, sewer or gas services. The governing body shall have power to acquire and hold rights-of-way, water rights, and other property, within and without the city limits. Assessment for waterworks construction or extension may be made as provided in part 7, article 18, of chapter 160 of the General Statutes of North Carolina. (1917, c. 136, sub-ch. 11, ss. 1, 2; C. S., s. 2807; 1929, c. 285, s. 1; 1955, c. 1177, s. 3; 1957, c. 799, s. 1.)

Cross References.—As to control of light system under Plan C, see § 160-330, subsection (e). As to control of water system under Plan C, see § 160-329, subsection (d). As to co-operation with the Board of Conservation and Development in locating water supplies, see § 113-20. As to joint water supply facilities by municipalities, see §§ 160-191.6 to 160-191.10. As to water and sewer authorities, see § 162A-1 et seq.

Editor's Note.—The 1929 amendment inserted in the first sentence "and to any person, firm or corporation desiring the same outside the corporate limits, where the service is available."

The 1955 amendment added the last sentence.

The 1957 amendment rewrote the first sentence to make it also applicable to sewer and gas systems.

For comments on statute, prior to the 1955 and 1957 amendments, see 12 N. C. Law Rev. 324; 13 N. C. Law Rev. 96.

This section is valid. Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538 (1939).

Power to Sell Electricity within Three-Mile Zone.—A municipality has the power to purchase electricity for its own use and the use of its citizens, and where it is authorized by general and special statutes to purchase current from a power company and to resell and distribute it at a profit to its citizens and to those within a three-mile zone therefrom, the grant of power to do so is effective in law under the authority of the legislature to grant municipal corporations any powers which promote the welfare of the public and the communities in which they are established unless prohibited by the organic law. Holmes v. Fayetteville, 197 N. C. 740, 150 S. E. 624 (1929).

Electricity May Be Distributed Beyond Corporate Limits.—A municipality has the power to purchase, generate, or distribute electricity for its own use and the use of its inhabitants, and is given legislative authority to extend its lines beyond its corporate limits for the purpose of selling electricity to nonresidents, and therefore a complaint in an action against a municipality alleging injury from negligent maintenance of power lines outside the corporate limits is not demurrable on the ground that the alleged negligence of its officers and employees was ultra vires the city. Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538 (1939).

City May Impose Conditions on Residents Outside Corporate Limits.—"Since it is optional with the city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents to connect their sewer facilities with the sewerage system of the city, or with any other sewerage system which connects with the city system, it may fix the terms upon which the service may be rendered and its facilities used. G. S. 160-255; G. S. 160-256; Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Kennerly v. Dallas, 215 N. C. 532, 2 S. E. (2d) 538 (1939); George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935)." Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

All municipalities have been given the right to extend water and sewer facilities beyond the corporate limits of the municipality. Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

But the authority granted by this section is not unlimited. It authorizes a municipality to construct and operate utilities for the benefit of the public beyond its corporate boundaries within reasonable limitations. If the authority was not thus limited this section would contravene fundamental law. Public Service Co. v. Shelby, 252 N. C. 816, 115 S. E. (2d) 12 (1960).

Liability of City.—In Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169 (1925), the question of a city's liability for loss by fire arose. The plaintiff contended that the city was liable as the position of the curb which kept the trucks from the hydrant was the proximate cause of the loss and that the loss was occasioned directly by the negligence of the city in repairing the streets. For a discussion of this case, see 4 N. C. Law Rev. 137, 140.

A city, which owns a municipal light and waterworks system, and operates the same in its governmental capacity, cannot be held liable in damages for failure to furnish a sufficient supply of either water or light. Harrington v. Greenville, 159 N. C. 632, 75 S. E. 849 (1912); Howland v. Asheville, 174 N. C. 749, 94 S. E. 524 (1917); Mabe v. Winston-Salem, 190 N. C. 486, 130 S. E. 169 (1925).

In Munick v. Durham, 181 N. C. 188, 106 S. E. 665 (1921), a recovery against the city was sustained, but that was a suit growing out of the settlement of claimant's water bill, and involving only the business relations between the individual and the city as vendor of water for profit, and not a matter concerning the water supply for general fire protection. Mack v. City Water Works, 181 N. C. 383, 107 S. E. 244 (1921).

City Not Required to Obtain Certificate of Public Convenience.—See annotations under § 62-101.

Municipality Owes Duty of Equal Service Only to Consumers within Its Limits.—When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service in furnishing water only to consumers within its corporate limits. Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

A municipality owes no duty to supply water to a resident for resale to others either within or without its limits. Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

Extension of Sewer and Water Lines Beyond Corporate Limits.—Municipalities have legislative permission to extend their sewer and water lines beyond corporate boundaries. Such extensions may be made either because necessary to the effective operation of the improvement within the city or to provide services for a profit beyond the corporate limits. Bonds for the latter purpose may be issued only when the electorate has expressly so authorized. Eakley v. Raleigh, 252 N. C. 683, 114 S. E. (2d) 777 (1960).

Furnishing Water to Persons outside Corporate Limits.—A municipality which operates its own waterworks is under no duty in the first instance to furnish water to persons outside its limits. It has the discretionary power, however, to engage in this undertaking. When a municipality exercises this discretionary power, it does not assume the obligations of a public service corporation toward nonresident consumers. It retains the authority to specify the terms upon which nonresidents may obtain its water. In exerting this authority, it may, under § 160-256, "fix a different rate from that charged within the corporate limits." Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

Construction and Operation of Transmission Lines beyond Corporate Limits.—This section authorizes a municipal corporation engaged in the production and distribution of electric power to extend this service to consumers outside its corporate limits. This would confer authority on a city to construct and operate transmission lines for the distribution of electric current for the benefit of the public beyond its corporate boundaries within reasonable limitation. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

This section does not confer the right to exclude competition in the territory served. Having the right to engage in this business gives no exclusive franchise, and if from lawful competition the town's business be curtailed, it would seem that no actionable wrong would result, nor would it be entitled to injunctive relief therefrom. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958); Honey Properties, Inc. v. Gastonia, 252 N. C. 567, 114 S. E. (2d) 344 (1960).

Quoted in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Murphy v. High Point, 218 N. C. 597, 12 S. E. (2d) 1 (1940); Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U. S. 118, 59 S. Ct. 366, 83 L. Ed. 543 (1939); Candler v. Asheville, 247 N. C. 398, 101 S. E. (2d) 470 (1958); Morganton v. Hutton & Bourbonnais Co., 251 N. C. 531, 112 S. E. (2d) 111 (1960); In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961); Davidson v. Stough, 258 N. C. 23, 127 S. E. (2d) 762 (1962).

§ 160-256. Authority to fix and enforce rates.—The governing body, or such board or body which has the management and control of the light, water, sewer or gas systems in charge, may fix such uniform rents or rates for the services as will provide for the payment of the annual interest on existing bonded debt for such systems, for the payment of the annual installment necessary to be raised for the amortization of any debt, and the necessary allowance for repairs, maintenance and operation, and when the city shall own and maintain both waterworks and sewer systems, including sewage disposal plants, if any, the governing body shall have the right to operate such systems as a combined and consolidated system, and when so operated to include in the rates adopted for the water a sufficient amount to provide for the payment of annual interest and principal on any existing bonded debt for the sewage system, and the necessary allowance for repairs, maintenance and operation. The governing body shall fix the times when charges for light, water, sewer and gas services shall become due and payable, and in case such charges are not paid within ten (10) days after becoming due, the same may at any time thereafter be collected either by suit in the name of the city or by the collector of taxes for the city. Upon the failure of owner of property for which services are furnished to pay the charges when due, then the governing body or its agents or employees may cut off the service to such property; and when so cut off it shall be unlawful for any person, firm or corporation, other than the governing body or its agents, to turn on the services to such property: Provided, however, that for service supplied outside the corporate limits of the city, the governing body or body having such systems in charge, may fix a different rate from that charged within the corporate limits, with the same exemption from liability by the city or town as is contained in § 160-255: Provided further, that where the services may be cut off under the provisions of this section for the failure of the occupant of the premises to pay the charges due, and such occupant is not the owner of the premises, it shall not be lawful to require the payment of the delinquent bill before turning on the services at the instance of a new and different tenant or occupant of the premises. This proviso shall not apply in cases where the premises are occupied by two or more tenants serviced by the same light, water or gas meter, as the case may be. (1917, c. 136, sub-ch. 11, s. 3; C. S., s. 2808; 1929, c. 285, s. 2; 1933, cc. 140, 353; 1957, c. 799, s. 2.)

Local Modification.—Ashe, Haywood, Mecklenburg, Transylvania: 1933, c. 353; Caldwell: 1933, c. 368.

Editor's Note.—The 1929 amendment added the first proviso to this section, and the first 1933 amendment added the second proviso. Prior to the second 1933 amendment the first sentence of this section merely provided that the governing board should fix "such uniform rates for water as is deemed best."

The 1957 amendment made this section also applicable to sewer and gas systems.

This section contains ample standards to guide a municipality in exercising the delegation of authority to fix fair and just water rates. Candler v. Asheville, 247 N. C. 398, 101 S. E. (2d) 470 (1958).

Increase in Rates Charged for Water Supplied to Consumers outside Corporate Limits.—An amendment to an ordinance which substantially increases the rates charged for water supplied by a municipality for consumption outside its corporate limits cannot be held discriminatory in a legal sense when it applies alike to all nonresidents, and it is immaterial that a nonresident consumer deems such rates exorbitant or unreasonable. Fulghum v. Selma, 238 N. C. 100, 76 S. E. (2d) 368 (1953).

Cited in Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

§ **160-257. Separate accounts for water system.**—It shall be the duty of the governing body to keep a separate statement and account of the money received by the city from the waterworks system, and it shall be the duty of the said body to give preference to the waterworks system over the other departments of the city in such funds, and to provide for the proper upkeep of the waterworks system and an amount necessary for the enlargement of the waterworks system before turning over to the other departments the money so received. (1917, c. 136, sub-ch. 11, s. 4; C. S., s. 2809.)

Part 9. Care of Cemeteries.

§ **160-258. Care fund established.**—The governing body is authorized to create a fund to be known as the perpetual care fund for the cemeteries, for the purpose of perpetually caring for and beautifying the cemeteries, and such fund shall be kept by the city as is provided for bequests and gifts for cemetery purposes; and the governing body may make contracts with lot or space owners in the cemeteries, obligating the city to keep up and maintain said lots or spaces in perpetuity upon payment of such sum as may be fixed by the governing body; and the governing body is further authorized and empowered to accept gifts and bequests for such purposes, or upon such other trusts as the donors may prescribe; and the governing body is authorized to set aside for such perpetual care fund such portion of the proceeds of sale of cemetery lots as the governing body may deem advisable. (1917, c. 136, sub-ch. 9, s. 1; C. S., s. 2810; 1927, c. 254.)

Cross References.—As to trust funds for the care of cemeteries, see §§ 65-7 through 65-12. As to power over cemetery outside corporate limits, see § 160-203.1.

Editor's Note.—The 1927 amendment changed the amount to be set aside from "an amount not exceeding twenty-five per cent" to "such portions as the governing body may deem advisable."

Setting of Memorial Markers.—This section and § 160-259 do not impliedly authorize a town to enact an ordinance reserving to the town the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town. Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N. C. 205, 105 S. E. (2d) 659 (1958).

§ **160-259. Application of fund.**—The principal of the funds appropriated by the governing body for caring for the cemeteries shall be held by the governing body for caring for and beautifying the cemeteries and improving the same. The income from the fund heretofore or hereafter made shall be used for the purpose of carrying out contracts with the individual or space owners for the perpetual care of individual plats and spaces. Any gifts heretofore or hereafter made to and received by the city or any of its officers shall be held and used as a sacred trust fund for the purposes and upon the conditions named in such gifts or bequests, and all such funds shall be kept and invested separately and shall not be used for any other purpose, or by the city in its affairs. (1917, c. 136, sub-ch. 9, s. 1; C. S., s. 2811.)

Cross Reference.—See note to § 160-258.

§ 160-260. Separate accounts kept.—The city treasurer shall keep a separate account of the cemetery funds, and a still further separate account of all special gifts or bequests made by persons for and in connection with the cemeteries and particular lots therein. The governing body has the power to make rules and regulations and adopt ordinances for the carrying out of the duties imposed by this and the two preceding sections in regard to the care of cemeteries. (1917, c. 136, sub-ch. 9, s. 1; C. S., s. 2812.)

§ 160-260.1. Right to condemn and take over cemeteries adjoining municipal cemeteries.—When, in the opinion of the governing authority of any city or town, it is deemed advisable and desirable to acquire and take over any cemetery, graveyard or burial place adjoining any cemetery heretofore established by any city or town, then such governing authority of said city or town shall have the right to take over or acquire by condemnation or the right of eminent domain such adjoining cemetery, graveyard or burial place and in the acquisition of such adjoining cemetery, graveyard or burial place, the governing authority of any city or town shall exercise such authority according to the procedure and rights set forth in article 1 and article 2 of chapter 40 of the General Statutes entitled "Eminent Domain", as amended. The governing authority of such city or town shall have the right to acquire the title in fee simple to such adjoining cemetery, graveyard or burial place, and, in addition, shall have the right to establish perpetual care for such adjoining cemetery or cemeteries, including the right to adopt rules and regulations for decorating and beautifying said cemeteries, establishing walkways, care of graves and any and all other things necessary to be done for the care, preservation and upkeep of such cemeteries. As used in this section, the word "adjoining" shall be construed to mean not only cemeteries immediately adjacent to, bordering on or contiguous to the boundaries of a cemetery already established by a city or town but also shall include other cemeteries, graveyards and burial places which are immediately connected together successively or in a series of contiguous tracts or boundaries, and which when taken together constitute one unified body or tract of land. (1951, c. 385, s. 1.)

Editor's Note.—Section 2½ of the act inserting this and the following section provides that it "does not apply to any cemetery to which article 7 of chapter 65 of the General Statutes is applicable."

§ 160-260.2. Right to condemn easement for perpetual care.—In lieu of acquiring by condemnation a title in fee simple to the adjoining cemeteries as set forth in § 160-260.1, the governing authorities of said cities or towns shall have the right to condemn or acquire an easement or privilege for the purpose of establishing a system of perpetual care for such adjoining cemeteries. In condemning or acquiring such easement or privilege, the authority and procedure conferred by article 1 and 2 of chapter 40 of the General Statutes entitled "Eminent Domain", as amended, shall be used for such purpose and shall be applicable to the exercise of the acquisition of the easement or privilege herein established. The proceedings under this section shall be limited to the acquisition of an easement or privilege for establishing perpetual care of such adjoining cemeteries, and the governing authority of any city or town exercising such rights shall have the authority to make reasonable rules and regulations for the decoration, adornment and upkeep of said adjoining cemeteries and to establish a perpetual care system or plan for such purpose. The word "adjoining", as used in this section, shall be construed and defined in the same way and manner as construed and defined in § 160-260.1. The governing authority of any city or town shall have the right to discontinue or take a nonsuit in such condemnation proceedings, whether exercised under § 160-260.1 or under this section, at any time prior to the entering of said final order or decree in such proceedings. Any condemnation proceedings instituted under this section shall not divest any person, firm or corporation of any title held in fee simple but shall confer upon the governing authority of such city or town the right to establish perpetual care as herein set forth. The authority to acquire such adjoining cemeteries as set forth in § 160-260.1, as well as the authority to acquire the easement or privilege set forth in this section, and the exercise of same, are declared to be for a public purpose, and the governing authority of such city or town is authorized to expend public funds for such acquisition and for such perpetual care. (1951, c. 385, s. 2.)

Part 10. Municipal Taxes.

§ **160-261. Provision for listing and collecting taxes.**—The governing body shall provide by an ordinance or otherwise means for the collection of taxes in the city and shall cause property to be listed for taxation which has not otherwise been listed as required by law. The governing bodies of cities and towns are in all respects vested with the same powers and authority as is now, or may hereafter be, vested in the board of county commissioners of the county in which such city or town is located, with respect to the allowance of discounts and charging penalties in the collection of taxes. (1917, c. 136, sub-ch. 6, s. 2; C. S., s. 2813; 1925, c. 183.)

Cross References.—As to taxes which may be levied by the governing body of the municipality, see § 160-56. As to assessment procedure for municipalities, see § 105-332 et seq.

Editor's Note.—The 1925 amendment added the second sentence.

§ **160-262. Unlisted taxables entered.**—The officer who has charge of the collection of taxes in any city shall, after the most diligent inquiry, and by comparing his book with the county tax books, make out a list of all persons liable for poll tax, or for taxes on property, who have failed to return a list in the manner and in the time prescribed, together with the estimated value of all the property not listed, and shall enter such persons in a separate part of his book. (1917, c. 136, sub-ch. 6, s. 4; C. S., s. 2814.)

§ **160-263. Power and duties of tax collector.**—The officer who has charge of the collection of taxes in any city shall, in the collection of taxes, be vested with the same power and authority as is given by the State to sheriffs for like purpose, and shall be subject to the same fines and penalties on failure or neglect of duty. It shall be his duty to collect all taxes levied by the governing body, and he shall be charged with the sums appearing on the tax list as due for city taxes. He shall at no time retain in his hands over three hundred dollars for a longer time than seven days, under a penalty of ten per cent per month to be paid to the city upon all sums so unlawfully retained. (1917, c. 136, sub-ch. 6, s. 1; C. S., s. 2816.)

Cross Reference.—As to general duties of a tax collector, see § 105-375.

§ **160-264. Settlement with tax collector.**—In settlement with the city the tax collector shall be credited with all poll taxes and taxes on personal property which the governing body shall declare to be insolvent and uncollectible, and with such amounts as may be involved in suit by appeal from the ruling of the board, and he shall be charged with and shall pay over all other sums appearing on the tax list. After the accounts of the tax collector shall be audited and settled, the same shall be reported to the governing body, and when approved by it the same shall be recorded in the minute book of such body, and shall be prima facie evidence of correctness, and impeachable only for fraud or specified error. (1917, c. 136, sub-ch. 6, s. 1; C. S., s. 2817.)

§ **160-265. Bond of tax collector and other officers.**—The governing body of the city shall require the tax collector of the city, and any and all officers and employees, such bonds as it may deem necessary, and may pay the expenses of providing such bonds, including the bond of the mayor. (1917, c. 136, sub-ch. 6, s. 3; C. S., s. 2818.)

§ **160-266. License to plumbers and electricians.**—The governing body may regulate and license plumbers and those engaged in the electrical wiring of buildings for light, power, or heat, and before issuing a license may require the applicant to be examined and to give bond in such sum and upon such conditions as the governing body may determine, and with such sureties as it may approve; and such body may, for incompetency on the part of such licensees or for refusal to comply with the ordinances relating to such business, or for any other good cause, revoke any license issued hereunder. No person, firm, or corporation shall do any kind of plumbing or electrical wiring of buildings without first having obtained a license from the governing body. No license issued hereunder by the governing body shall be for more than one year, and same shall not be transferrable or assignable except by the permission of the governing body. And no license shall be issued, as herein provided, before the license tax shall have been paid. (1917, c. 136, sub-ch. 6, ss. 6, 7, 8, 9; C. S., s. 2819.)

ARTICLE 19.

Exercise of Powers by Governing Body.

Part 1. Municipal Meetings.

§ **160-267. Legislative powers; how exercised.**—Except as otherwise specially provided, the legislative powers of the governing body may be exercised as provided by ordinance or rule adopted by it. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2820.)

§ **160-268. Quorum and vote required.**—Every member of the governing body shall have the right to vote on any question coming before it. A majority shall constitute a quorum, and a majority vote of all members present shall be necessary to adopt any motion, resolution or ordinance. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2821.)

§ **160-269. Meetings regulated, and journal kept.**—The city governing body shall from time to time establish rules for its proceedings. Regular and special meetings shall be held at a time and place fixed by ordinance. All legislative sessions shall be open to the public, and every matter shall be put to a vote, the result of which shall be duly recorded. The governing body shall not by executive session or otherwise consider or vote on any question in private session. A full and accurate journal of the proceedings shall be kept, and shall be open to the inspection of any qualified registered voter of the city. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2822.)

The requirement of this section that a full and accurate journal of the proceedings be kept is merely directory and not a condition precedent to the validity of a contract regularly entered into by the municipality. Graham v. Karpark Corp. 194 F. (2d) 616 (1952).

Stated in State v. Baynes, 222 N. C. 425, 23 S. E. (2d) 344 (1942).

Part 2. Ordinances.

§ **160-270. How adopted.**—No ordinance shall be passed finally on the date on which it is introduced, unless by two-thirds vote of those present. No ordinance making a grant, renewal, or extension, whatever its kind or nature, of any franchise or special privilege shall be passed until voted on at two regular meetings, and no such grant, renewal, or extension shall be made otherwise than by ordinance. (1917, c. 136, sub-ch. 13, s. 3; C. S., s. 2823.)

Cross Reference.—As to the enforcement of ordinances, see § 160-14.

Cited in State v. Baynes, 222 N. C. 425, 23 S. E. (2d) 344 (1942).

§ 160-271. Ordinances amended or repealed.—No ordinance or part thereof shall be amended or annulled except by an ordinance adopted in accordance with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 4; C. S., s. 2824.)

§ 160-272. How ordinance pleaded and proved.—In all judicial proceedings it shall be sufficient to plead any ordinance of any city by caption, or by number of the section thereof and the caption, and it shall not be necessary to plead the entire ordinance or section. All printed ordinances or codes or ordinances published in book form by authority of the governing body of any city or copies of such ordinances duly certified by the city or town clerk or mayor under the official seal of such city or town shall be admitted in evidence in all courts, and shall have the same force and effect as would the original ordinance. (1917, c. 136, sub-ch. 13, s. 14; C. S., s. 2825; 1959, c. 631.)

Cross References.—As to mayor certifying ordinance on appeal, see § 160-16. As to ordinance certified by mayor being prima facie evidence as to its existence, see § 8-5.

Editor's Note.—The 1959 amendment inserted in the second sentence "or copies of such ordinances duly certified by the city or town clerk or mayor under the official seal of such city or town."

In General.—The introduction of an ordinance of a town regulating the speed of trains backing upon the track, and properly proven, under this section, will not be regarded as error on appeal, when it is proved that upon the evidence in the case the jury has found, upon a trial without legal error, the negligence of the defendant's employees proximately caused the personal injury for which damages were sought in the action. Parker v. Seaboard, etc., Railway, 181 N. C. 95, 106 S. E. 755 (1921).

Where the ordinances of a city have not been published in book form, it is necessary in order to prove the existence of an ordinance, over an objection, to produce by the proper official the official records of the city or town, showing its passage and the entry on the records of the ordinance itself. Toler v. Savage, 226 N. C. 208, 37 S. E. (2d) 485 (1946), citing State v. Razook, 179 N. C. 708, 103 S. E. 67 (1920).

Allegations Insufficient to Plead Ordinance Adopting National Electrical Code.—Allegations referring to "The National Electrical Code of 1951 * * * and also which has been adopted by the city of Lenoir" totally failed to plead any ordinance of the city of Lenoir making the National Electrical Code a part of its municipal law, and the words "and also which has been adopted by the city of Lenoir" should have been stricken on motion. Lutz Industries, Inc. v. Dixie Home Stores, 242 N. C. 332, 88 S. E. (2d) 333 (1955).

Cited in Hudson v. Gulf Oil Co., 215 N. C. 422, 2 S. E. (2d) 26 (1939); State v. Clyburn, 247 N. C. 455, 101 S. E. (2d) 295 (1958); Black v. Penland, 255 N. C. 691, 122 S. E. (2d) 504 (1961).

Part 3. Officers.

§ 160-273. City clerk elected; appointment of deputy clerk; powers and duties.—The governing body shall, by a majority vote, elect a city clerk to hold office for the term of two years and until his successor is elected and qualified. He shall have such powers and perform such duties as the governing body may from time to time prescribe in addition to such duties as may be prescribed by law. He shall keep the records of the meetings. The person holding the office of city clerk at the time when any of the plans set forth in this sub-chapter shall be adopted by such city shall continue to hold office for the term for which he was elected, and until his successor is elected and qualified. The governing body shall also have the authority to appoint a deputy city clerk to act during the absence or disability of the city clerk, and may assign to said deputy the same powers, authority, and duties as are assigned to the city clerk.

The governing body may also provide that the city clerk shall have the powers and perform the duties of city treasurer, such powers and duties to be prescribed from time to time by the governing body and to be in addition to all powers and duties as may be prescribed by law, and in such event the city clerk shall be known as the "city clerk and treasurer." The powers conferred by the next preceding sentence are in addition to and not in substitution for those conferred by any other act, whether general, special, private or local, and every municipality may proceed under the provisions of said next preceding sentence, notwithstanding any conditions, restrictions or limitations contained in any other act, whether general, special, private or local. (1917, c. 136, sub-ch. 13, s. 1; C. S., s. 2826; 1941, c. 103; 1949, c. 14.)

Editor's Note.—The 1941 amendment added the second paragraph and the 1949 amendment added the last sentence of the first paragraph.

§ **160-274. Vacancies filled; mayor pro tem.**—If a vacancy occurs in the office of the mayor or governing body, the vacancy shall be filled by the governing body of the city. If the mayor is absent or unable from any cause temporarily to perform his duties, they shall be performed by one elected by the governing body of the city for that purpose, who shall be called "mayor pro tem.," and he shall possess the powers of mayor only in matters not admitting delay, but shall have no power to make permanent appointments. (1917, c. 136, sub-ch. 13, s. 6; C. S., s. 2827.)

Cross References.—As to powers of the governing body to fill vacancy in the office of mayor, see § 160-10. As to election of mayor pro tempore for a municipality under Plan A, see § 160-310; under Plan B, see § 160-317; under Plan D, see § 160-341.

§§ **160-275, 160-276**: Repealed by Sessions Laws 1955, c. 698.

§ **160-277. Bonds required.**—Every official, employee, or agent of any city who handles or has custody of more than one hundred dollars of such city's funds at any time shall, before assuming his duties as such, be required to enter into bond with good sureties, in an amount sufficient to protect such city, payable to such city, and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody, or control, which bond shall be approved by the mayor and board of aldermen or other governing body and deposited with the city, except that such bond of any employee or employees may, in the discretion of the mayor and governing body, be conditioned only upon a true accounting for funds of the city. (1917, c. 136, sub-ch. 13, s. 15; C. S., s. 2828; 1945, c. 619.)

Editor's Note.—The 1945 amendment added the exception clause at the end of the section.

§ **160-278. Information requested from mayor.**—The governing body at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request him to be present to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt by the mayor of such questions. (1917, c. 136, sub-ch. 13, s. 2; C. S., s. 2829.)

Part 4. Contracts Regulated.

§ **160-279. Certain contracts in writing and secured.**—All contracts made by any department, board, or commission in which the amount involved is two hundred dollars or more shall be in writing, and no such contract shall be deemed to have been made or executed until signed by the officer authorized by law to sign such contract, approved by the governing body. Any contract made as aforesaid may be required to be accompanied by a bond with sureties, or by a deposit of money, certified check, or other security for the faithful performance thereof, satisfactory to the board or official having the matter in charge, and such bonds or other securities shall be deposited with the city treasurer until the contract has been carried out in all respects; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, and the officer, department, or board making the contract, with the approval of the governing body. (1917, c. 136, sub-ch. 13, s. 8; C. S., s. 2831.)

Local Modification.—City of Henderson: 1953, c. 731, s. 33.

Cross Reference.—As to procedure for letting a public contract, see § 143-129 et seq.

Stated in Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ 160-280: Repealed by Session Laws 1963, c. 406, s. 1.

§ 160-281. Validating certain conveyances.—All deeds made, executed, and delivered prior to August 23, 1924, for a good and valuable consideration, by incorporated cities and towns conveying lands used for park purposes, without authority to make and deliver such deed having been first granted by the General Assembly, are hereby in all respects validated, ratified, and confirmed as fully and completely as if said cities and towns had been granted authority of the General Assembly to make and deliver said deeds, and said deeds are hereby declared to be valid conveyances of the land and premises therein described. (Ex. Sess. 1924, c. 95.)

§ 160-281.1. Validation of conveyances by cities, towns, school districts, etc.—All conveyances and sales of real estate made prior to January 1, 1942, by the governing body of any city, town, school district, or school administrative unit by private sale without notice and public outcry shall be valid and cured of any such defects and any city, town, school district or school administrative unit affected hereby shall have six months from February 9, 1951, to assert any claim it may have by reason of such defects or it will thereafter be forever barred: Provided further, that all release deeds and conveyances of real estate made prior to January 1, 1942, by the governing body of any city, town, school district or school administrative unit by private sale without notice and public outcry, which real estate was theretofore held in any manner for a particular purpose upon the happening of a future event, or upon a contingent future interest by way of shifting or springing use, shall be valid and cured of any such defects and shall operate to divest such governing bodies of all claim or interest in the real estate thereby conveyed; provided, however, any city, town, school district, school administrative unit and all persons or parties affected hereby shall have six months from May 12, 1959, to assert any claim or interest they may have in the premises conveyed or released by such deeds or be forever barred thereafter and, to the end that title to such premises may be forever settled, failure to commence action in the courts of this State on such claim or interest within the time limited herein may be pleaded in bar of all claims or interests asserted thereafter. (1951, c. 44; 1959, c. 487.)

Editor's Note.—The 1959 amendment added the provisos at the end of the section.

For discussion of the 1959 amendment, see 38 N. C. Law Rev. 165.

§ 160-281.2. Validation of agreements between telephone companies and municipalities.—Any franchise agreement or other arrangement heretofore made between any telephone company and any municipality in which the telephone company has agreed to furnish certain telephone service or facilities to the municipality is hereby in all respects validated during the life or term of such agreement or arrangement. (1959, c. 685, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provides that "nothing herein shall be construed as repealing, modifying, altering, or amending subsection (f) of G. S. 105-120."

Section Unconstitutional.—Free or reduced telephone service to municipalities is a tax prohibited by law, and is discriminatory both as between towns which are similarly situated and as between those towns and individual rate payers living in towns or in the country. Hence, this section is unconstitutional (1) because it offends the due process provisions of both State and federal Constitutions, (2) because it is not a uniform tax, (3) because it interferes with vested rights, and (4) because it is an attempt to surrender the police power of the State. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Part 5. Control of Public Utilities, Institutions, and Charities.

§ 160-282. Power to establish and control public utilities, institutions, and charities.—Any city shall have the right to acquire, establish, and operate waterworks, electric lighting systems, gas systems, school libraries, cemeteries, market houses, wharves, play or recreation grounds, athletic grounds, parks, abattoirs, slaughterhouses, sewer systems, garbage and sewage disposal plants, auditoriums or places of amusement or entertainment, and armories. The city shall have the further right to make a civic survey of the city, establish hospitals, clinics, or dispensaries for the poor, and dispense milk for babies; shall have the power to establish a system of public charities and benevolence for the aid of the poor and destitute of the city; for the welfare of visitors from the country and elsewhere, to establish rest rooms, public water closets and urinals, open sales places for the sale of produce, places for hitching and caring for animals and parking automobiles; and all reasonable appropriations made for the purposes above mentioned shall be binding obligations upon the city, subject to the provisions of the Constitution of the State. (1917, c. 136, sub-ch. 13, s. 11; C. S., s. 2832.)

Cross References.—As to joint water supply facilities by municipalities, see §§ 160-191.6 to 160-191.10. As to water and sewer authorities, see § 162A-1 et seq.

Editor's Note.—See 12 N. C. Law Rev. 324.

Granting Exclusive Franchises.—No grant of franchise by a city is deemed exclusive unless so expressed by the grant, and by granting a franchise to a light and sewerage company the city does not deprive itself of its rights under this section, except as set out in the grant. Hill v. Elizabeth City, 291 F. 194 (1923).

Schools.—The power given by this section to acquire, establish and operate schools applies to any city whether or not it has adopted a plan of government under this chapter. And the grant of the power is by implication the grant of such power as is necessary to exercise the power expressly granted. Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

Quoted in McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

Cited in Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

§ **160-283. How control exercised.**—(a) Control over Departments.—The waterworks department, electric or gas light system, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by any city under separate organization or as a separate corporation under the control of any city in the State, which has been heretofore under the separate management and control of separate boards or corporations, may henceforth be under the management and control of the governing body of such city in the State.

(b) Departments May Be Abolished.—In all cities except those which have adopted Plan C or Plan D, hereafter set forth, before the governing body shall have control or management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, the governing body of the city, by two-thirds vote taken at two separate regular meetings of such governing body, shall pass an ordinance to the effect that the waterworks, electric or gas light system, sewerage system, library, park or park and tree commission system, or playground system, or any other public service owned, operated, or conducted by such city under separate organization or corporation, or either of them, shall be abolished and the control and management shall be under the governing body of the city.

(c) Property Vested in the City.—Upon the passage by the governing body of any city of such ordinance, the waterworks, electric or gas light system, sewerage system, the library system, and the park or park and tree commission system, and any other public service owned, operated, or conducted by such city under separate organization or corporation then in existence either under separate organization or under separate management or control or under separate corporation, shall immediately become the property of the city, and all land, real estate, rights, easements, franchises, choses, and property of every kind, whether real or personal, tangible or intangible, the title of which is vested in such separate corporation or board, shall be and become vested in such city, and the boards of water commissioners, electric light commissioners, sewerage commissioners, library boards, park boards, or park and tree commission boards, or the board or commission of any other public service owned, operated, or conducted by or on behalf of such city under separate organization or corporation shall cease to exist as a corporation; and all indebtedness, bonds, or other contracts and obligations of any nature incurred by, for, or on account of the waterworks, electric or gas light system, sewerage system, library system, park or park and tree commission system, or other public utility in the name of or by such corporation, or by such city in its behalf, or by the corporation and such city jointly, shall be and become the sole obligations of such city.

(d) Same Procedure in Other Cases.—There shall be the same procedure with reference to the library system, park or park and tree commission system, or playground system by the governing body of all cities which shall have adopted Plan C or Plan D before such control and title shall become vested as hereinbefore stated.

(e) Popular Vote Required.—In all cities, except those which have adopted Plan C or Plan D, hereafter set forth, before the foregoing provisions of this section shall become effective, such changes in the control and management of the waterworks, electric light, sewerage, etc., shall first be approved by a majority of the qualified voters of such municipality at any regular or special election held under the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 9; C. S., s. 2833.)

Cited in Greensboro v. Smith, 241 N. C. 363, 85 S. E. (2d) 292 (1955).

§ **160-284. Ordinances to regulate management.**—The governing body of any city in the exercise of its control and management of the waterworks, electric light, sewerage system, library system, park or park and tree commission system, or any other public service owned, operated, or conducted by such city, shall have power to make rules, regulations, and ordinances in connection with the management thereof as they may deem necessary, and shall have power to enforce such rules, regulations, and ordinances. (1917, c. 136, sub-ch. 13, s. 10; C. S., s. 2834.)

Rates for Sewer Service Outside Corporate Limits.—A city is free to establish by contract or by ordinance such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper. Atlantic Constr. Co. v. Raleigh, 230 N. C. 365, 53 S. E. (2d) 165 (1949).

§ **160-285. Additional property acquired.**—The governing body of any city shall have power to acquire such additional property as it may deem necessary for a better system of waterworks, electric light, sewerage, library, park or parks or other public service owned, operated, or conducted by such city. Upon the adoption by the governing body of any city of any one of the plans of government provided for in this subchapter, the laws now in force in reference to the waterworks, electric light, sewerage, parks, libraries, or other public service owned, operated, or conducted by such city, shall not be repealed by this subchapter, but shall be construed with this subchapter and only repealed in so far as they are inconsistent with the provisions of this subchapter. (1917, c. 136, sub-ch. 13, s. 10; C. S., s. 2835.)

Part 6. Effect upon Existing Regulations.

§ **160-286. Existing rights and obligations not affected.**—All official bonds, recognizances, obligations, contracts, and all other instruments entered into or executed by or to the city before this subchapter takes effect in any city, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the city, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as is herein otherwise provided, shall continue without abatement and remain unaffected by this subchapter; and no legal act done by or in favor of the city shall be rendered invalid by its adoption of any plan of government provided for by this subchapter. (1917, c. 136, sub-ch. 13, s. 5; C. S., s. 2836.)

§ **160-287. Existing ordinances remain in force.**—All valid ordinances and resolutions of any city in force on March 6, 1917, and not inconsistent with the provisions of this subchapter, and all rules of procedure adopted by the governing body of any city, shall be and remain in full force and effect until repealed, annulled, or amended under the provisions of this subchapter, or under the provisions of the charter of such city, and all laws relative to any city, not in conflict with the provisions of this subchapter shall be and remain in full force and effect. (1917, c. 136, sub-ch. 13, s. 5; C. S., s. 2837.)

§ **160-288. Existing election laws remain in force.**—This subchapter shall not repeal or impair any general, special, or local election laws now in force in any city, but such general, special, or local laws shall be and continue in full force and effect except where clearly inconsistent with and repugnant to the provisions of this subchapter; and the municipal elections of such city shall continue to be held under and subject to the provisions of such special election laws except as herein otherwise provided: Provided, however, that in every case the governing body of any city shall have the right and power in its discretion and by an ordinance adopted by a two-thirds vote of the members of the entire governing body, to order a new registration of the voters of such city for any general, regular, or special municipal election held in such city for any purpose, unless excepted in this subchapter. (1917, c. 136, sub-ch. 13, s. 12; C. S., s. 2838.)

§ **160-289. General laws apply.**—All questions arising in the administration of the government of any city, and not provided for in this subchapter, shall be governed by the laws of the State in such cases made and provided. (1917, c. 136, sub-ch. 13, s. 13; C. S., s. 2839.)

ARTICLE 20.

Accounting System.

§ **160-290. Nature of accounting system.**—Accounting systems shall be devised and maintained which shall exhibit the condition of the city's assets and liabilities, the value of its several properties, and state of its several funds. Such systems shall be adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules as shall be necessary to show the full effect of such transactions for each fiscal year upon the finances of the city and in relation to each department of the city government; and there shall be included distinct summaries and schedules for each public utility owned and operated by the city. In all respects, as far as the nature of the city's business permits, the accounting systems maintained shall conform to those employed by progressive business concerns and approved by the best usage. The governing body shall have power to employ accountants to assist in devising such accounting systems. (1917, c. 136, sub-ch. 14, s. 1; C. S., s. 2840.)

Cross References.—As to separate accounts for water system, see § 160-257. As to separate accounts for cemetery, see § 160-260.

ARTICLE 21.

Adoption of New Plan of Government.

Part 1. Effect of Adoption.

§ **160-291. Continues corporation with powers according to plan.**—Any city which shall adopt, in the manner hereinafter prescribed, one of the plans of government provided in this subchapter shall thereafter be governed by the provisions thereof; and the inhabitants of such city shall continue to be a municipal corporation under the name existing at the time of such adoption, and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties, liabilities, and obligations provided for herein or otherwise pertaining to or incumbent upon such city as a municipal corporation. (1917, c. 136, sub-ch. 16, s. 1; C. S., s. 2842.)

§ 160-292. Legislative powers not restricted.—None of the legislative powers of a city shall be abridged or impaired by the provisions of this subchapter, but all such legislative powers shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions of this subchapter. (1917, c. 136, sub-ch. 16, s. 2; C. S., s. 2843.)

§ 160-293. Ordinances remain in force.—All ordinances, resolutions, orders, or other regulations of a city or of any authorized body or official thereof existing at the time when such city adopts a plan of government set forth in this subchapter shall continue in full force and effect until annulled, repealed, modified, or superseded. (1917, c. 136, sub-ch. 16, s. 3; C. S., s. 2844.)

§ 160-294. Mayor and aldermen to hold no other offices.—The mayor or any member of the board of aldermen shall not hold any other office or position of profit, trust, or honor, or perform any other duties or functions than mayor or aldermen under the city government unless it shall be submitted to and approved by a majority of the qualified voters of the city at a regular or special election. (1917, c. 136, sub-ch. 16, s. 4; C. S., s. 2845.)

§ 160-295. Wards regulated.—The territory of any city adopting any one of the plans of government provided for in this subchapter shall continue to be divided into the same number of wards existing at the time of such adoption, which wards shall retain their boundaries until same shall be changed under the provisions of this subchapter: Provided, that if the plan so adopted provides for a different number and arrangement of wards from that existing at the time of such adoption, then in such event the wards of such city shall be so changed and arranged as to conform to the provisions of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 5; C. S., s. 2846.)

Part 2. Manner of Adoption.

§ 160-296. Petition filed.—A petition addressed to the board of elections of the county in which the city is situated, in the form and signed and certified as provided in the next section, may be filed with the county board of elections. The petition shall be signed by qualified voters of the city to a number equal to at least twenty-five per cent of the qualified voters at the last election next preceding the filing of the petition. In cities having a population of eighty thousand (80,000), as shown by the last census, in which it is proposed to adopt plan "B," the petition shall be signed by ten per cent of the qualified voters of said city. (1917, c. 136, sub-ch. 16, s. 6; C. S., s. 2847; 1933, c. 80, s. 5.)

Local Modification.—City of Fayetteville: 1945, c. 120; town of Tarboro: 1955, c. 60, s. 1.

Editor's Note.—The 1933 amendment added the last sentence relating to cities having a population of 80,000.

§ 160-297. Form of petition.—The petition shall be in substantially the following form:

To the County Board of Elections of .... County:

We, the undersigned qualified voters of the city, respectfully petition your honorable body to cause to be submitted to a vote of the voters of the city of .... the following questions: "Shall the city of .... adopt the form of government defined as Plan (A, B, C, or D), as it is desired by petitioners and consisting of (describe plan briefly, as government by a mayor and councilors elected at large, or government by a mayor and councilors elected partly at large and partly from wards or districts, or government by three commissioners, one of whom shall be the mayor, or government by a mayor and four councilors with a city manager), according to the provisions of this chapter, Municipal Corporations, articles 22 to 25 inclusive."

Or, in case it shall be desired by such petitioners that two of such plans shall be submitted, then the question may be stated as follows:

"Shall the city of .... adopt the form of government defined as Plan ...... or ...... (naming two of such plans as stated above), or remain under the present form of government?"

The petition may be in the form of separate sheets, each sheet containing at the top thereof the heading above set forth, and when attached together and offered for filing the several papers shall be deemed to constitute one petition, and there shall be endorsed thereon the name and address of the person presenting the same for filing. (1917, c. 136, sub-ch. 16, s. 7; C. S., s. 2848.)

Local Modification.—Town of Tarboro:
1955, c. 60, s. 2.

§ **160-298. Election held.**—Within five days after the petition has been filed with the county board of elections, if the petition shall contain twenty-five per cent of the qualified voters as before set forth, the board of elections shall call an election in accordance with such petition. The board of elections shall cause notice of such election to be given at least once a week for four weeks in some newspaper of general circulation in the county in which the election is to be held, or at the courthouse door of the county in which the city is situated or at the door of the city or town hall, and the date of such election shall be fixed by the board not later than forty days from the receipt of such petition. The notice shall be signed by the chairman of the county board of elections, and the cost of publication thereof paid by the city. The election shall be held under, and governed and controlled by, the laws in force at the time of such election governing regular elections of such city. (1917, c. 136, sub-ch. 16, s. 8; C. S., s. 2849.)

Local Modification.—Town of Tarboro:
1955, c. 60, s. 3.

§ **160-299. Petitions for more than one plan.**—Separate petitions for the submission of more than one of such plans may be filed in the form and manner hereinbefore provided, but if petitions for the submission of more than two of such plans shall be submitted at such election, those two plans shall be submitted at the election, petitions for which shall be first filed with the county board of elections. (1917, c. 136, sub-ch. 16, s. 9; C. S., s. 2850.)

§ **160-300. What the ballots shall contain.**—All ballots used in elections held upon the adoption of the plans of government herein set forth shall contain the name of the plan submitted, as Plan A, B, C, or D, or any two of such plans submitted, as the case may be, with a brief description of each plan submitted, as described in the petition, and shall also contain the existing form of government under the name "present form of government." The names of the plans and forms shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of government for which he casts his vote; if there shall be only one plan submitted, the letter and description of such plan and the "present form of government" only shall appear, and the voter shall express his preference between such plan and the "present form of government." If there shall be two plans submitted, then each of the plans shall be denominated and described on the ballot as herein set forth, and the "present form of government" shall also appear upon the ballot, and the ballot shall be so printed that in appropriate squares the voter may designate by a cross (X) mark only the plan or form of his first choice and the plan and form of his second choice. (1917, c. 136, sub-ch. 16, s. 10; C. S., s. 2851.)

Local Modification.—Town of Tarboro:
1955, c. 60, s. 4.

§ **160-301. Form of ballots.**—Except that the crosses here shown shall be omitted, the ballots shall be printed substantially as follows:

(Form of ballot when only one plan is submitted:)

Special Municipal Election

Plan .... (with brief description). ☒
Present Form of Government. ☐

(Form of ballot when two plans are submitted:)

Special Municipal Election

To vote for any plan or form of government, make a cross in the appropriate square to the right of the name of such plan or form.

Note your first choice in the first column.

Note your second choice in the second column.

Names of plans or forms	First Choice.	Second Choice.
Plan—(with brief description).	X	
Plan—(with brief description).		X
Present Form of Government.		

(1917, c. 136, sub-ch. 16, s. 11; C. S., s. 2852.)

Local Modification.—Town of Tarboro: 1955, c. 60, s. 5.

§ **160-302. Series of ballots.**—The plans and forms on all ballots shall be printed in rotation as follows: The ballot shall be printed in as many series as there are plans or forms. The whole number of ballots to be printed shall be divided by number of series and the quotient so obtained shall be the number of ballots in each series. In printing the first series of ballots the names of each plan or form shall be arranged in the alphabetical order of the letters of the plans submitted, followed by the "present form of government." After printing the first series, the first plan or form shall be placed last and the next series printed, and the process shall be so repeated until each plan shall have been printed first an equal number of times. The ballots so printed shall be then combined in tablets or packages so as to have the fewest possible ballots having the same order of plans or forms printed thereon together in the same tablet or package. (1917, c. 136, sub-ch. 16, s. 12; C. S., s. 2853.)

§ **160-303. How choice determined.**—(a) One Plan Submitted.—If only one of the plans herein set forth and the "present form of government" are submitted, the plan or form of government receiving a majority of the votes cast shall be declared the plan or form selected.

(b) More than One Plan Submitted.—If two of the plans herein set forth and the "present form of government" are submitted, the plan or form receiving a majority of first choice votes equal to a majority of all the ballots cast shall be declared the plan or form selected. If no plan or form shall receive such a majority, then the second choice votes received for each plan or form shall be added to its first choice votes, and the plan or form receiving the highest total of first and second choice votes equal to a majority of all ballots cast shall be declared the plan or form selected.

(c) How Ballots Are Counted.—In counting the ballots, if two plans and the "present form of government" are submitted, the precinct officers shall enter the total number of ballots on a tally-sheet printed therefor. They shall also carefully enter on such sheet the number of first choice and second choice votes for each plan or form of government. Only one vote shall be counted for any one plan or form on any one ballot. If two votes are cast for the same plan or form, the higher choice only shall be counted. If but one choice is voted on a ballot, it shall be counted as a first choice. If more than one cross appears in the same choice column on any ballot, they shall be counted as choices with priority as between each other in the order in which they appear in the choice column. Ballots marked with more than two crosses shall be declared void. A tie between two or more plans or forms shall be decided in favor of the one having the largest number of first choice votes. (1917, c. 136, sub-ch. 16, ss. 13, 14; C. S., s. 2854.)

Part 3. Result of Adoption.

§ **160-304. Plan to continue for two years.**—Should any one of the plans of government provided for in this subchapter be adopted, the plan shall continue in force for the period of at least two years after beginning of the term of office of the officials elected thereunder; and no petition proposing a different plan shall be filed during the period of one year and six months after such adoption. (1917, c. 136, sub-ch. 16, s. 15; C. S., s. 2855.)

§ **160-305. City officers to carry out plan.**—It shall be the duty of the mayor, the governing body, and the city clerk and other city officials in office, and all boards of election and all election officials, when any plan of government set forth in this subchapter has been adopted by the qualified voters of any city or is proposed for adoption, to comply with all requirements of this subchapter relating to such proposed adoption and to the election of the officers specified in such plan, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the provisions of this subchapter and of the plan so adopted. (1917, c. 136, sub-ch. 16, s. 16; C. S., s. 2856.)

§ **160-306. First election of officers.**—The first election next succeeding the adoption of any of the plans provided for by this subchapter shall take place on Tuesday after the first Monday in May next succeeding such adoption, and thereafter the city election shall take place biennially on the Tuesday next following the first Monday in May, and the municipal year shall begin and end at ten o'clock in the morning following the day of election. (1917, c. 136, sub-ch. 16, s. 17; C. S., s. 2857.)

§ **160-307. Time for officers to qualify.**—On Wednesday after the first Monday in May following the adoption of any of the plans herein provided for, and biennially thereafter, the mayor-elect and the councilors-elect or commissioners shall meet and be sworn to the faithful discharge of their duties. The oath may be administered by the city clerk or by any justice of the peace, and a certificate that such oath has been taken shall be entered on the journal of the city council. At any meeting thereafter the oath may be administered in the presence of the city council to the mayor, or to any councilor or commissioner absent from the meeting on the first Wednesday after the first Monday in May. (1917, c. 136, sub-ch. 16, s. 18; C. S., s. 2858.)

ARTICLE 22

Different Forms of Municipal Government.

Part 1. Plan "A." Mayor and City Council Elected at Large.

§ **160-308. How it becomes operative.**—The method of city government herein provided for shall be known as Plan A. Upon the adoption of Plan A by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part II, Plan A, ss. 1, 2; C. S., s. 2859.)

§ **160-309. Mayor's election and term of office.**—There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after the first Monday in May following his election and until his successor is elected and qualified. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 3; C. S., s. 2860.)

Cross Reference.—As to election of mayor in municipalities not operating under one of the forms of government provided by the 1917 act, see § 160-10.

§ **160-310. Number and election of city council.**—The legislative powers of the city shall be vested in a city council. In cities of five thousand inhabitants and under the city council shall consist of three; in cities of five thousand to ten thousand the city council shall consist of five; in cities of ten thousand to twenty thousand inhabitants, the city council shall consist of seven; and in all over twenty thousand inhabitants the city council shall consist of nine. The councilmen shall be elected at large and from the qualified voters of the city. One of its members shall be elected by the council biennially as mayor pro tem. At the first election held in a city after its adoption of Plan A, the councilors shall be elected to serve for two years from Wednesday after the Monday in May following their election and until their successors are elected and qualified, and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. The number of inhabitants shall be determined by the last United States government census or estimate. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 4; C. S., s. 2861.)

§ **160-311. Salaries of mayor and councilmen.**—The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred dollars nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than thirty-five hundred dollars. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder and shall six months prior to the time of the expiration of its term fix by ordinance the salary within the above limits of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of succeeding mayors, but such ordinance shall not be binding in case another plan shall be adopted during the term of office of such council. The council may by a two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding two hundred dollars each a year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136; sub-ch. 16, Part II, Plan A, s. 5; C. S., s. 2862.)

§ **160-312. Officers elected by city council.**—All heads of departments and members of municipal boards, as their present terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 5; C. S., s. 2863.)

Cross Reference.—As to appointment of town officers, see § 106-9.

§ **160-313. Power of removal in mayor.**—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board, other than governing board, before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 7; C. S., s. 2864.)

§ **160-314. Veto power of mayor.**—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a two-thirds vote of all the members of the city council, it shall then be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, and vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part II, Plan A, s. 8; C. S., s. 2865.)

Part 2. Plan "B," Mayor and Council Elected by Districts and at Large.

§ **160-315. How it becomes operative.**—The method of city government herein provided for shall be known as Plan B. Upon the adoption of Plan B by a city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part III, Plan B, ss. 1, 2; C. S., s. 2866.)

§ **160-316. Mayor's election and term of office.**—There shall be a mayor elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from Wednesday after first Monday in May following his election and until his successor is elected and qualified, and at each biennial city election thereafter the mayor shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 3; C. S., s. 2867.)

Cross Reference.—As to election of town mayor, see § 160-10.

§ **160-317. City council; election and term of office.**—The legislative powers of the city shall be vested in a city council. One of its members shall be elected biennially as its mayor pro tem. In cities of over eighty thousand (80,000) population, as shown by the last census, the city council or aldermen shall consist of twelve members; one shall be elected from each ward by and from the qualified voters of that ward. On or before March 1, 1933, the governing body of each city of over eighty thousand (80,000) inhabitants shall, and it is made mandatory on them to divide the said city into twelve wards as nearly equal as possible as to population. In cities having more than seven wards the city council shall be composed of twelve members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. At the first election held in a city after its adoption of Plan B, the councilors elected from each ward shall be elected to serve for two years from Wednesday after first Monday in May following their election and until their successors are elected and qualified; and at each biennial city election thereafter the councilors elected to fill vacancies caused by the expiration of the terms of councilors shall be elected to serve for two years. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 4; C. S., s. 2868; 1933, c. 80, s. 1.)

Cross Reference.—As to election of town commissioners, see § 160-5.

Editor's Note.—Public Laws 1933, c. 80, added the third and fourth sentences relating to cities of over 80,000.

§ **160-318. Officers elected by city council.**—All heads of departments and members of municipal boards, as their terms of office expire, shall be elected by the city council: Provided, that the city council may by two-thirds vote at any time abolish, alter, or establish such departments and boards as it may by ordinance determine. A city attorney shall be elected by the city council, and the council may also elect a city solicitor. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 5; C. S., s. 2869.)

Cross Reference.—As to appointment of officers by commissioners of town, see § 160-9.

§ **160-319. Power of removal in mayor.**—The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 6; C. S., s. 2870.)

§ **160-320. Salaries of mayor and council.**—The mayor shall receive for his services such salary as the city council shall by ordinance determine: Provided, however, that the salary of the mayor shall be within the following limits: In cities of five thousand inhabitants and under, not less than three hundred dollars nor more than one thousand dollars. In cities of five thousand to ten thousand inhabitants, not less than five hundred nor more than fifteen hundred dollars. In cities of ten thousand to twenty-five thousand inhabitants, not less than one thousand nor more than three thousand dollars. In cities of over twenty-five thousand inhabitants, not less than two thousand nor more than five thousand dollars, and it shall be mandatory that the mayor shall give his entire time and attention to the affairs of the city. The number of inhabitants shall be determined by the last United States government census or estimate. The mayor shall receive no other compensation from the city, and his salary shall not be increased or diminished during the term for which he is elected: Provided, however, that the council first elected under this plan shall fix by ordinance the salary within the above limits of the mayor first elected hereunder, and shall six months prior to the time of the expiration of its term fix by ordinance the salary, within the above limits, of the mayor who shall succeed the first mayor under this plan, and each council shall thereafter fix by ordinance the salary of the succeeding mayors; but such ordinance shall not be binding as to succeeding mayors in case another plan shall be adopted during the term of office of such council. The council may be by two-thirds vote of all its members, taken by call of the "yeas" and "nays," establish a salary for its members not exceeding one hundred dollars each per year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 7; C. S., s. 2871; 1933, c. 80, s. 2.)

Editor's Note.—Public Laws 1933, c. 80, increased the maximum salary in a city of over 25,000 inhabitants from $3,500 to $5,000, and made it mandatory that the mayor should devote his entire time to city affairs.

§ **160-321. Supervisory power of mayor.**—All heads of departments after their election by the city council or alderman, as provided for by § 160-318, shall be under the direction, control and supervision of the mayor during their tenure of office and until discharged by law. (1933, c. 80, s. 3.)

§ **160-322. Approval of contracts.**—No contract or obligation of whatever nature shall be binding upon the city until first approved by the majority of the city council or aldermen, and approved and countersigned by the mayor. (1933, c. 80, s. 4.)

§ **160-323. Veto power in mayor.**—Every order, ordinance, resolution, and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his objections in writing, to the city council, which shall enter his objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution, or vote by a majority vote of all the members of the city council, it shall be in force; but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution, or vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. (1917, c. 136, sub-ch. 16, Part III, Plan B, s. 8; C. S., s. 2872.)

Part 3. Plan "C." Commission Form of Government.

§ **160-324. How it becomes operative.**—The method of city government herein provided for shall be known as Plan C. Upon the adoption of Plan C by any city in the manner prescribed by this subchapter, such plan shall become operative, and its powers of government shall be exercised, as is prescribed herein and in article 21 of this chapter. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, ss. 1, 2; C. S., s. 2873.)

§ **160-325. Board of commissioners governing body.**—The government of the city and the general management and control of all of its affairs shall be vested in a board of commissioners, which shall be elected and shall exercise its powers in the manner hereinafter set forth; and such board shall have full power and authority to enact laws and ordinances for the government and management of the city and all its departments. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 1, s. 3; C. S., s. 2874.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ **160-326. Number, power and duties of commissioners.**—The board of commissioners shall consist of three members, one of whom shall be mayor, and all of whom shall be elected by a vote of the people as hereinafter provided. One of the commissioners shall be elected and known as commissioner of public works; one of the commissioners shall be elected and known as commissioner of public safety; and the mayor shall be known as commissioner of administration and finance. And the commissioners are hereby empowered to appoint, elect, employ, suspend, and discharge all other officers and employees necessary for the operation and management of the city government and its various departments and activities, and to make all necessary rules and regulations for their government; and full power and authority is hereby granted the board of commissioners to enact all laws and ordinances for the proper government of the city. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 4; C. S., s. 2875.)

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ **160-327. Power and duties of mayor.**—The mayor shall be the chief executive officer of the city, and subject to the supervision of the board of commissioners, shall perform all duties pertaining to such office. He shall do and perform all duties provided or prescribed by law or by the ordinances of the city not expressly delegated to any other person. He shall have general supervision and oversight over the departments and officers of the city government, and shall be the chief representative of the city, and shall report to the board any failure on the part of any of the officers of his or any other department to perform their duties, and shall preside at all meetings of the board of commissioners. He shall sign all contracts on behalf of the city unless otherwise provided by law, ordinance or resolution of the board of commissioners; he shall have charge of and cause to be prepared and published all statements and reports required by law or ordinance or by resolution of the board of commissioners. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 5; C. S., s. 2876.)

§ **160-328. Commissioner of administration and finance.**—(a) Purchasing Agent.—The commissioner of administration and finance (who is also mayor) shall be the purchasing agent of the board of commissioners of the city, and all property, supplies, and material of every kind whatsoever shall, upon the order of the board of commissioners, be purchased by him; and when so purchased by him, the bills therefor shall be submitted to and approved by the board of commissioners before warrants are issued therefor. When such warrants are issued, they shall be signed by the commissioners and countersigned by some other person designated by the board of commissioners.

(b) Collector of Taxes and Other Dues.—He shall collect all taxes, water rents, license fees, franchise taxes, rentals, and all other moneys which may be due or become due to the city; he shall issue license or permits as provided by law, ordinance, or resolution adopted by the board of commissioners; he shall report the failure on the part of any person, firm or corporation to pay money due the city; and he shall report to the board of commissioners any failure on the part of any person, firm, or corporation to make such reports as are required by law, ordinance, or order of the board of commissioners to be made, and he shall make such recommendations with reference thereto as he may deem proper.

(c) Supervision of Accounts.—He shall have charge of and supervision over all accounts and records of the city, and accounts of all officers, agents, and departments required by law or by the board of commissioners to be kept or made. He shall regularly, at least once in three months, inspect or superintend inspection of all records or accounts required to be kept in any of the offices or departments of the city, and shall cause proper accounts and records to be kept, and proper reports to be made. He shall recommend to the board methods of modern bookkeeping for all departments, employees, and agents of the city, and shall, acting for the board of commissioners, audit or cause to be audited by an expert accountant, quarterly, the accounts of every officer or employee who does or may receive or disburse money, and shall publish or cause to be published quarterly statements showing the financial condition of the city. He shall examine or cause to be examined all accounts, payrolls, and claims before they are acted on or allowed, unless otherwise provided by law or by order of the board of commissioners.

(d) Control of Employees.—He shall have control of all employees of his department, and of all other officers and employees not by law, ordinance, or resolution of the board of commissioners apportioned or assigned to some other department. The assessor, auditor, city clerk, city attorney, and their respective offices or departments, and all employees therein, and all bookkeepers and accountants are apportioned and assigned to the department of administration and finance, and shall be under the direction and supervision of the commissioner thereof.

(e) General Duties.—In the absence or inability of any commissioner to act, he shall exercise temporary supervision over the department assigned to such commissioner, subject, however, to the power of the board to substitute someone else temporarily to perform any of such duties. He shall do and perform any and all other services ordered by the board and not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S., s. 2877.)

§ **160-329. Commissioner of public works.**—(a) Construction of Public Works.—The commissioner of public works shall have authority and charge over all the public works not herein expressly given to some other department; the construction, cleansing, sprinkling, and repair of the streets and public places, the erection of buildings for the city, the making and construction of all other improvements, paving, curbing, sidewalks, bridges, viaducts, and the repair thereof. He shall approve all estimates of the city engineer of the cost of public works, and recommend to the board of commissioners the acceptance of the work done or improvement made, when completed according to contract, and perform such other duties with reference to such other matters as may be required by law, ordinance, or order of the board of commissioners.

(b) Control of Streets and Public Places.—The commissioner shall have supervision and control, and it shall be his duty to keep in good condition the streets, cemeteries, and public parks in the city or belonging to the city, subject to the supervision and control of the board of commissioners; he shall have control, management and direction of all public grounds, bridges, viaducts, subways, and buildings not otherwise assigned herein to some other department; he shall have supervision of the enforcement of the provisions of law and the ordinances relating to streets, public squares and places, cemeteries, and the control of the placing of billboards and street wastepaper receptacles.

(c) Control over Public Utilities.—He shall have supervision over the public-service utilities not otherwise assigned to some other department, and all persons, firms, or corporations rendering service in the city under any franchise, contracts, or grant made by the city or State, not otherwise assigned to some other department. He shall have control of the location of streetcar tracks, telephone and telegraph wires, and other things placed by public-service corporations in, along, under, or over the streets, and shall report to the board of commissioners or city officers, as may be appointed by them to receive his reports, any failure of such person or corporation to render proper services under a franchise granted by the city or State, and shall report any failure on the part of such person, firm, or corporation to observe the requirements or conditions of such franchise, contract, or grant.

(d) Control of Water System.—He shall have charge of the watersheds from which the city takes its supply of water, pumping stations, pipe lines, filtering apparatus, and all other things connected with or incident to the proper supply of water for the city; it shall be his duty to act for the city, subject to the control of the board of commissioners, in securing all rights of way and easements connected with and necessary to the supply of water for the city; he shall have supervision and control of all buildings, grounds, and apparatus connected therewith and incident to the furnishing of water for the city; he shall superintend the erection of water tanks and laying of water lines and the operation thereof.

(e) Control of Departments.—The department of the city engineer, and all employees therein, the departments of streets, parks, cemeteries, buildings, and all employees in said departments, shall be under the supervision and control of the commissioner of public works; and he shall do and perform all other services ordered by the board, or that may be ordered by the board, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 7; C. S., s. 2878.)

§ 160-330. Commissioner of public safety.—(a) Charge of Police Force.—The commissioner of public safety shall have charge of the police force, subject to the supervision and control of the board of commissioners, and shall have power temporarily to supplant the chief of police and take charge of the department, and shall at all times have power to give directions to the officers and all employees in the police department, and his directions shall be binding upon all such officers and employees, subject only to the control of the board of commissioners. He shall have charge of the police stations, jails, and property and apparatus connected therewith, including city ambulance and patrol wagons used in connection with his department.

(b) Control of Fire Department.—He shall have the supervision and control, subject to the control of the board of commissioners, of the fire department, of all firemen, officers, and employees therein or connected therewith, and of all fire stations, property and apparatus connected therewith; he shall have power to supersede temporarily the chief of the fire department, and his orders to such department and all employees therein shall be binding upon the department.

(c) Traffic Regulations.—He shall be charged with the duty of enforcing all ordinances and resolutions relating to traffic on the public streets, alleys, and public ways, on and across railway lines and through and over the cemetery ways, public parks, and other public places.

(d) Health Regulations.—He shall, subject to the supervision of the board of commissioners, have control of the laws, ordinances, and orders relating to the public health and sanitation, and all health officers, employees of the city, connected with and under his department; and it shall be the duty of the board of commissioners to pass such ordinances and prescribe such rules and regulations and employ such persons as will be necessary to protect and preserve public health. He shall have control and supervision, through the health officer under his department, over public dumping grounds and dumps and city scavengers; he shall be charged, through his department, with the enforcement of all quarantine regulations, of keeping clean all streets, alleys, and public places, and with suppressing and removing conditions on private property within the city that are a menace to health or public safety. He shall be authorized to enter upon private premises for the purpose of discharging the duties imposed upon him, and he shall cause to be abated all nuisances which may endanger or affect the health of the city, and generally do all things, subject to the control of the board of commissioners, that may be necessary and expedient for the promotion of health and suppression of disease.

(e) Sewer and Light Systems.—He shall have control and supervision over the sewer system, and shall have charge and control over the sewer inspector and all other officers and employees connected with the department of lights and sewers. He shall have supervision and control over the lighting system of the city, and the management and direction of the lighting of the streets, alleys, and all other public places and grounds and all other places where city lights are placed; he shall be charged with the duty of seeing that all persons, firms, and corporations charged with the duty of supplying lights or waterpower perform the obligation imposed upon them by law, ordinance, or order of the board of commissioners.

(f) Control over Officers.—He shall have charge of the electrical inspector, plumbing inspector, building inspector, market house and the employees connected therewith and of all apparatus and property used therein: he shall have charge, supervision and direction of all officers and employees of the city connected with and under his department. He shall perform all other services ordered by the board of commissioners, or that may be ordered by the board of commissioners, not herein expressly conferred upon some other department. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 8; C. S., s. 2879.)

§ **160-331. Recommendations as to purchases.**—It shall be the duty of each commissioner to recommend to the city purchasing agent the purchase of goods and the contract for all things necessary to be contracted for in his department, and these recommendations shall be submitted to the board of commissioners for its orders with respect thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 9; C. S., s. 2880.)

Cross Reference.—As to purchasing agent, see § 160-328, subsection (a).

§ **160-332. General powers of board of commissioners.**—The board of commissioners shall exercise all legislative powers, functions, and duties conferred upon the city or its officers. It shall make all orders for the doing of work or the making or construction of any improvements, bridges, or buildings. It shall levy all taxes, apportion and appropriate all funds, audit and allow all bills and accounts, payrolls, and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers, and other work, improvements, or repairs which may be specially assessed. It shall make or authorize the making of all contracts, and no contracts shall bind or be obligatory upon the city unless either made by ordinance or resolution adopted by the board of commissioners or reduced to writing and approved by the board or expressly authorized by ordinance or resolution adopted by the board. All contracts and all ordinances and resolutions making contracts or authorizing the making of contracts shall be drawn by the city attorney, or submitted to such officer before the same are made or passed. All heads of departments, agents, and employees are the agents of the board of commissioners only, and all their acts shall be subject to review and to approval or revocation by the board of commissioners. Every head of department, superintendent, agent, employee, or officer shall from time to time, as required by law or ordinance, or when requested by the board of commissioners, or whenever he shall deem necessary for the good of the public service, report to the board of commissioners in writing respecting the business of his department, office, or employment, all matters connected therewith. The board of commissioners may by ordinance or resolution assign to a head of a department, a superintendent, officer, agent, or employee, duties in respect to the business of any other department, office, or employment, and such service shall be rendered without additional compensation. The board of commissioners shall elect and have authority over the city clerk, who shall be the clerk of the board of commissioners. The board of commissioners shall have charge of all matters pertaining to public health, and shall perform all duties belonging thereto. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, ss. 10, 11; C. S., s. 2881.)

Municipal Contracts.—To be valid, a contract by a municipality must be authorized by ordinance or resolution adopted by the board of commissioners. Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

The mere failure of the clerk to properly record a resolution of the commissioners authorizing a contract would not authorize the municipality to repudiate it. Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

Cited in Abbott Realty Co. v. Charlotte, 198 N. C. 564, 152 S. E. 686 (1930).

§ **160-333. Commissioners' service exclusive.**—Each member of the board of commissioners shall devote his time and attention to the performance of the public duties to the exclusion of all other occupations, professions, or callings. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 2, s. 12; C. S., s. 2882.)

§ **160-334. The initiative and referendum.**—(a) Ordinances Submitted by Petition.—Any proposed ordinance may be submitted to the board of commissioners by petition signed by electors of the city equal to the number provided herein for recall of any official. The signatures, verifications, authentications, inspections, certification, amendments, and submission of such petition shall be the same as provided for the removal of officials.

(b) Duty of the Board.—If the petition accompanying the proposed ordinance be signed by the requisite number of electors, and contains a request that the ordinance be passed, or submitted to a vote of the people if not passed by the board of commissioners, such board shall either:

(1) Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition, or

(2) After the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of commissioners shall forthwith submit the question to the qualified voters at a special election called for that purpose, or to a generel election occurring within ninety days after the date of the clerk's certificate. If the petition is signed by not less than ten and less than twenty-five per cent of the electors as above defined, then the board of commissioners shall within twenty days pass such ordinance without change or submit the same at the next general city election.

(c) Popular Vote Taken.—The ballots used when voting upon such ordinance shall contain these words: "For the Ordinance" (stating the nature of the proposed ordinance) and "Against the Ordinance" (stating the nature of the proposed ordinance). If the majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

(d) Proposition for Repeal.—The board of commissioners may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general election; and should any such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly.

(e) Publication.—Whenever any ordinance or proposition is required by this subchapter to be submitted to the voters of the city at any election, the city shall cause such ordinance or proposition to be published once in a newspaper of general circulation in the city, such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on.

(f) When Ordinance Takes Effect.—No ordinance passed by the board of commissioners, unless otherwise expressly provided, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency and is passed by a two-thirds vote of the board of commissioners, shall go into effect before twenty days from the time of its final passage and publication, as herein provided.

(g) Action upon Protest Filed.—If during the twenty days a petition, signed by electors of the city equal to the number prescribed herein to be signed to a petition for the recall of any official, protesting against the passage of such ordinance, be presented to the board of commissioners, the operation of such ordinance shall thereupon be suspended, and it shall be the duty of the board of commissioners to consider such ordinance, and if the same is not entirely repealed, the board of commissioners shall submit to the qualified voters the question of the repeal of such ordinance at an election to be held for that purpose in the manner and under the conditions herein provided for reference to voters of the question of recall of an official. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 3, s. 1; C. S., s. 2883.)

§ **160-335. Nomination of candidates.**—(a) Nomination by Primaries.—All candidates to be voted for at all general municipal elections, at which time a mayor, commissioners, or any other elective officers are to be elected under the provisions of this subchapter, shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in such primary in the manner hereinafter prescribed.

(b) How Primaries Held.—The primary election for such nominations shall be held on the second Monday preceding all general municipal elections. The judges and other officers of election appointed for the general municipal election shall, whenever practicable, be the judges of the primary election, and it shall be held at the same place and in the same manner and under the same rules and regulations and subject to the same conditions, and the polls to be opened and closed at the same hours, as are required for the general election.

(c) Notice of Candidacy.—Any person desiring to become a candidate for nomination by the primary for the office of mayor or commissioner of either of the other two departments or any other elective office shall, at least ten days prior to the primary election, file with the clerk a statement of such candidacy in substantially the following form:

State of North Carolina—County of ....

I, ..., hereby give notice that I reside at .... street, city of ...., county of ...., State of North Carolina; that I am a candidate for nomination to the office of (mayor, or commissioner of a particular department, or other office) to be voted upon at the primary election to be held on the .... Monday of ...., 19.., and I hereby request that my name be printed upon the official ballot for the nomination by such primary election for such office.

(Signed) ....

And he shall at the same time pay to the clerk, to be turned over to the city treasurer, the sum of five dollars.

(d) Publication of Names.—Immediately upon the expiration of the time for filing the petition of candidates, the city clerk shall cause to be published for three successive days in a daily newspaper of general circulation in the city, in proper form, the names of the persons as they are to appear upon the primary ballots.

(e) Ballots Prepared.—The clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the ballot the names of the candidates for mayor, arranged alphabetically, shall be placed, with a square at the left of each name, and immediately below the words, "vote for one." Following the names, likewise arranged in alphabetical order, shall appear the names of the candidates for the commissioners of the two other departments, respectively, with a square at the left of each name, and below the names of such candidates for each of the departments shall appear the words, "vote for one." Like provision shall be made for the names of candidates for each other elective office provided by law. The ballots shall be printed upon plain, substantial white paper, and shall be headed: "Candidates for nomination for mayor and commissioners of two other offices (naming them), of the city of ...., North Carolina, at the primary election," but shall have no party designation or mark whatever.

(f) Form of Ballots.—The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of parties you favor as candidates for the respective positions.)

Official primary ballot. Candidates for nomination for mayor and commissioners and other offices (naming them) of the city of ...., North Carolina, at the primary election.

For Mayor (naming candidates). (Vote for one.)

For Commissioner of the Department of Public Safety (names of candidates). (Vote for one.)

For Commissioner of the Department of Public Works (names of candidates). (Vote for one.)

Official ballot. Attest:

(Signature) .... City Clerk.

(g) Distribution of Ballots.—Having caused ballots to be printed, the city clerk shall cause to be delivered at each polling place a number of ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor.

(h) Who Entitled to Vote.—The persons who are qualified to vote at the succeeding municipal election shall be qualified to vote at such primary election, and shall be subject to challenge made by any resident of the city, under such rules as may be prescribed by the board of commissioners, and such challenge shall be passed upon by the judges of election and registrars: Provided, however, that the law applicable to challenge at a general municipal election shall be applicable to challenge made at such primary election.

(i) Ballots Counted.—Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precincts for each of the candidates, and make return thereof to the city clerk, upon blanks to be furnished by the clerk, within six hours of the closing of the polls.

(j) Returns Canvassed.—On the day following the primary election the city clerk, under the supervision and direction of the mayor, shall canvass such returns so received from all the polling precincts, and shall make and publish in some newspaper of general circulation in the city, at least once, the result thereof. The canvass by the city clerk shall be publicly made.

(k) Who to Be Candidates.—The two candidates receiving the highest number of votes for mayor, and the two candidates receiving the highest number of votes for commissioners for each of the respective departments, and the two candidates receiving the highest number of votes for any other elective office, shall be the candidates, and the only candidates whose names shall be placed upon the ballot for mayor, commissioners, and other elective offices at the next succeeding general municipal election: Provided, however, if any candidate for mayor receives a majority of all the votes cast for the office of mayor, or if any candidate for commissioner receives a majority of all the votes cast for the office of commissioner of the department for which such person is a candidate, then only the name of the candidate receiving a majority of all the votes cast for such position shall be placed upon the ballot for mayor or commissioner of such department at the next succeeding general municipal election. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 4; C. S., s. 2884; 1929, c. 32, s. 1.)

Editor's Note.—The 1929 amendment added the proviso to subsection (k) of this section.

§ 160-336. Recall of officials by the people.—(a) Who May Be Removed.—The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent.

(b) Petition Filed and Verified.—The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the clerk; which petition shall contain a general statement of the ground for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true, as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(c) Clerk to Examine and Certify Sufficiency.—Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not the petition is signed by the requisite number of qualified electors, and he shall attach to the petition his certificate, showing the results of such examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of the certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the board of commissioners without delay.

(d) Board to Order Primary.—If the petition shall be found to be sufficient, the board of commissioners shall order and fix a date for holding a primary, as provided in cases preceding regular elections, the primary to be held not less than ten days or more than twenty days from the date of the clerk's certificate to the board of commissioners that a sufficient petition is filed. If in the primary election any candidate receives a majority of all the votes cast, he shall be declared to be elected to fill out the remainder of the term of the officer who is sought to be recalled. If there be more than two candidates in such primary and no one received a majority of all the votes cast therein, then there shall be an election held within twenty days from the date of the primary, at which election the two candidates receiving the highest vote in the primary shall be voted for. Candidates' names shall be placed on the ticket in the primary and election held, and the results canvassed, under the same rules, conditions, and regulations as are prescribed for the primaries preceding regular elections. The board of commissioners shall make or cause to be made publication for ten days of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the results thereof declared in all respects as other city elections.

(e) Candidate Elected Succeeds to Office.—The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. At such election, if some other person than the incumbent is elected, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor.

(f) Vacancy Filled.—In case the party elected should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant, and in that event the unexpired term shall be filled by election by the board, but the commissioner removed shall not be eligible to election by the board, and the person so elected by the board shall be subject to recall as other commissioners. If the incumbent receives a majority of votes in the primary election he shall continue his office.

(g) Application of Method of Removal.—Such method of removal shall be cumulative and additional to any other method provided by law. In the event any officer is recalled and any person is elected as his successor, the right of recall of such successor so elected shall be as in case of an officer originally elected. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 5; C. S., s. 2885.)

Power to Remove Officers.—The power to remove a corporate officer for reasonable and just cause is one of the common-law incidents of all corporations. State v. Jenkins, 148 N. C. 25, 61 S. E. 608 (1908).

§ 160-337. Salaries of officers.—The mayor and commissioners shall have offices at the city hall. The compensation of the mayor and commissioners shall be as follows: In cities of five thousand inhabitants and under, the mayor shall receive one thousand dollars and the commissioners each seven hundred and fifty dollars. In cities of five to ten thousand inhabitants the mayor shall receive fifteen hundred dollars and the commissioners each one thousand dollars. In cities of ten to fifteen thousand inhabitants the mayor shall receive two thousand dollars and the commissioners each fifteen hundred dollars. In cities of fifteen to twenty-five thousand inhabitants the mayor shall receive twenty-six hundred dollars and the commissioners each twenty-four hundred dollars. In cities of twenty-five to forty thousand inhabitants the mayor shall receive three thousand five hundred dollars ($3,500.00), and the commissioners each three thousand two hundred and fifty dollars ($3,250.00). In cities over forty thousand inhabitants the mayor shall receive six thousand dollars ($6,000.00) and the commissioners each five thousand five hundred dollars ($5,500.00). The number of inhabitants shall be determined by the last United States government census or estimate. Every other officer, agent, employee, and assistant of the city government shall receive such salary or compensation as the board of commissioners shall by ordinance provide, payable in equal monthly installments, unless the board shall order payments to be made at other intervals. (1917, c. 136, sub-ch. 16, Part IV, Plan C, c. 6; C. S., s. 2886; 1923, c. 203; 1927, c. 243.)

Editor's Note.—The amendments of 1923 and 1927 increased the salaries.

Part 4. Plan "D." Mayor, City Council, and City Manager.

§ 160-338. How it becomes operative.—The method of city government herein provided for shall be known as Plan D. Upon the adoption of Plan D by a city in the manner prescribed by article 21 of this subchapter, such plan shall become operative, and the powers of government of such city shall be exercised, as provided herein and in article 21. (1917, c. 136, sub-ch. 16, Part V, Plan D, ss. 1, 2; C. S., s. 2887.)

Local Modification.—Town of Tarboro: 1955, c. 60, s. 6.

§ **160-339. Governing body.**—The government of the city and the general management and control of all its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner herein and in article 21 set forth, except that the city manager shall have the authority hereinafter specified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 3; C. S., s. 2888.)

§ **160-340. Number and election of city council.**—The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 4; C. S., s. 2889.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, cc. 94, 187: city of Burlington: 1957, c. 973, s. 1; City of Fayetteville (subject to approval of voters): 1951, c. 131, s. 1; 1953, c. 318, s. 1; city of Gastonia (effective on approval by voters): 1953, c. 34, s. 1; 1957, c. 101, s. 1; town of Graham: 1957, c. 1167, s. 2; town of Selma: 1963, c. 606; town of Tarboro: 1955, c. 60, s. 7; town of Whiteville: 1953, c. 735, s. 1.

§ **160-341. Power and organization of city council.**—All the legislative powers of the city shall be vested in the city council. The city council elected as aforesaid shall meet at ten o'clock in the forenoon on Wednesday after the first Monday of May in each year, and the members of the city council whose terms of office then begin shall severally make oath before the city clerk or justice of the peace to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice from its members of a mayor, who shall hold his office during the term for which he was elected a member of the city council, and a mayor pro tem., who shall hold his office during the pleasure of the city council. The organization of the city council shall take place as aforesaid, notwithstanding the absence, death, refusal to serve, or nonelection of one or more of the members: Provided, that at least three of the persons entitled to be members of the city council are present and make oath as aforesaid. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefor, may make oath at any time thereafter. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 5; 1919, c. 270, s. 1; C. S., s. 2890.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94; town of Graham: 1957, c. 1167, s. 3; town of Tarboro: 1955, c. 60, s. 8.

§ **160-342. Meetings regulated.**—The city council shall fix suitable times for its regular meetings. The mayor, the mayor pro tem. of the city council, or any two members thereof, may at any time call a special meeting by causing a written notice, stating the time of holding such meeting and signed by a person or persons calling the same, to be delivered in hand to each member or left at his usual dwelling place at least six hours before the time of such meeting. Meetings of the city council may also be held at any time when all the members of the council are present and consent thereto. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 6; C. S., s. 2891.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94.

§ **160-343. Quorum and conduct of business.**—A majority of the members of the city council shall constitute a quorum. Its meetings shall be public, and the mayor, who shall be the official head of the city, shall, if present, preside and shall have the same power as the other members of the council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the mayor, the mayor pro tem. of the city council shall preside, and in the absence of both, a chairman pro tempore shall be chosen. The city clerk shall be ex officio clerk of the city council, and shall keep records of its proceedings; but in case of his temporary absence, or in case of a vacancy in the office, the city council may elect by ballot a temporary clerk, who shall be sworn to the faithful discharge of his duties, and may act as clerk of the city council until a city clerk is chosen and qualified. All final votes of the city council involving the expenditure of fifty dollars or over shall be by yeas and nays and shall be entered on the records. On request of one member, the vote shall be by yeas and nays, and shall be entered upon the records. Three affirmative votes at least shall be necessary for the passage of any order, ordinance, resolution, or vote. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 7; C. S., s. 2892.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94; town of Tarboro: 1955, c. 60, s. 9.

§ **160-344. Vacancies in council.**—Vacancies in the city council shall be filled by the council for the remainder of the unexpired terms. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 8; C. S., s. 2893.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94; city of Gastonia (effective on approval of voters): 1957, c. 101, s. 2; town of Whiteville: 1959, cc. 789, 790.

§ **160-345. Election of mayor.**—The mayor shall be elected by the city council from among its own members, and shall hold office during the term for which he has been elected to the council. In case of a vacancy in the office of mayor, the remaining members of the council shall choose from their own number his successor for the unexpired term. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 9; 1919, c. 60, s. 1; 1919, c. 270, s. 2; C. S., s. 2894.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94; city of Burlington: 1957, c. 973, s. 2; city of Fayetteville (subject to approval of voters): 1951, c. 131, s. 2; 1953, c. 318, s. 2; city of Gastonia (effective on approval by voters): 1953, c. 34, s. 2; city of Wilmington: 1953, c. 69; town of Graham: 1957, c. 1167, s. 4; town of Tarboro: 1955, c. 60, s. 10; town of Whiteville: 1953, c. 735, s. 2.

§ **160-346. Salaries of mayor and council.**—The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding eighteen hundred dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members not exceeding six hundred dollars a year for each. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 10; C. S., s. 2895; 1951, c. 153, s. 1.)

Local Modification.—Mecklenburg, city of Charlotte: 1935, c. 94; city of Burlington: 1957, cc. 728, 1124: city of Fayetteville: 1955, c. 602 and 1959, c. 949; town of Tarboro: 1955, c. 60, s. 11.

Editor's Note.—The 1951 amendment increased the maximum salary of mayor from seven hundred to eighteen hundred dollars a year, and that of a council member from two hundred to six hundred dollars a year.

§ **160-347. Election of treasurer; salary.**—The mayor and council may elect from their membership a treasurer by the method outlined above, and in addition to the salary allowed as a member of the council, such treasurer may be paid for his services as treasurer not exeeding nine hundred dollars per annum. (1935, c. 180; 1951, c. 153, s. 2.)

Local Modification.—City of Fayetteville: 1947, c. 41; city of Washington: 1955, c. 323, s. 1; town of Tarboro: 1955, c. 60, s. 12.

Editor's Note.—The 1951 amendment increased the maximum salary from three hundred to nine hundred a year.

§ **160-348. City manager appointed.**—The city council shall appoint a city manager, who shall be the administrative head of the city government, and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council, and shall receive such compensation as it shall fix by ordinance. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 11; C. S., s. 2896.)

§ **160-349. Power and duties of manager.**—The city manager shall

(1) be the administrative head of the city government;
(2) see that within the city the laws of the State and the ordinances, resolutions, and regulations of the council are faithfully executed;
(3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient;
(4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition and its future financial needs;
(5) appoint and remove all heads of departments, superintendents, and other employees of the city. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 12; C. S., s. 2897.)

Local Modification.—City of Fayetteville: 1947, c. 41.

Liability of City for Malicious Prosecution by Manager.—Action of the city manager in instigating the arrest and prosecution of a municipal employee for embezzlement is done in the performance of a govermental function imposed upon the city manager by this section, and therefore the city may not be held liable in tort by such employee in an action for malicious prosecution. McDonald v. Carper, 252 N. C. 29, 112 S. E. (2d) 741 (1960).

Duties Can Be Performed Ex Officio by Council Member.—Conceding that the city manager is an officer in the meaning of the Constitution, Art. XIV, § 7, yet the duties of his office in the cases set forth in this section for the time being can be performed ex officio by one of the council "as mere auxiliary duties." State v. Holmes, 207 N. C. 293, 176 S. E. 746 (1934).

Cited in Nevins v. Lexington, 212 N. C. 616, 194 S. E. 293 (1937).

§ **160-350. Appointment and removal of officers.**—Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him; but the city manager shall report every such appointment and removal to the council at the next meeting thereof following any such appointment or removal. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 13; C. S., s. 2898.)

Local Modification.—City of Washington: 1955, c. 323, s. 2.

Commissioner of Police or Public Safety.—The city of Charlotte has power to create the office of commissioner of police or public safety. Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. (2d) 542 (1939).

§ **160-351. Control of officers and employees.**—The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council. (1917, c. 136, sub-ch. 16, Part V, Plan D, s. 14; C. S., s. 2899.)

Part 5. Plans "A" and "D," with Initiative, Referendum and Recall.

§ **160-352. How submitted, and effect of adoption.**—There may be submitted as an addition to Plans A or D "The Initiative and Referendum" and "Recall of Officials by the People," as set forth in Plan C, in which case all references to the board of commissioners shall apply to the mayor and council, and the petition for election and the ballots shall contain the name of the plan as "Plan A, with Initiative, Referendum, and Recall"; "Plan D, with Initiative, Referendum and Recall," and such plans shall be submitted with such additions as provided in this subchapter for the submission of such plans. (1917, c. 136, sub-ch. 16, Part VI; C. S., s. 2901.)

ARTICLE 23.

Amendment and Repeal of Charter.

§ 160-353. "Home rule" or "local self-government."—Within the limitations prescribed by the Constitution and now existing or hereafter enacted general laws, any municipality may amend or repeal its charter or any part thereof or adopt a new charter. The proposal to amend, repeal, or adopt may be initiated:

(1) By the governing body of such municipality;

(2) By any number of the qualified electors of such municipality not less than twenty-five per centum of qualified electors entitled to vote at the next preceding regular municipal election in such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 1; C. S., s. 2902.)

Repeal of Charter by Election.—Sections 160-353 through 160-363, construed in pari materia, disclose that the General Assembly did not contemplate or intend that an act creating a municipal corporation should be subject to repeal by an election initiated by petition and held prior to or simultaneously with the first regular election to be held in such municipality, prescribed by the act for the choice of its first elected officers; such an election, while valid as to the election of municipal officers, was void in respect of the alleged repeal of the statutory charter. State v. Mustian, 243 N. C. 564, 91 S. E. (2d) 696 (1956).

When a municipal corporation derives its corporate existence from the General Assembly by direct special act of incorporation, the requirements of a prior general statute, under which an attempt is made to repeal such special act of the General Assembly, will be strictly construed. State v. Mustian, 243 N. C. 564, 91 S. E. (2d) 696 (1956).

§ 160-354. Ordinances to amend or repeal charter.—(a) How Adopted.—If any amendment, repeal, or adoption be initiated by the governing body of any municipality, the governing body shall at one of its regular meetings, and not less than six days after the introduction thereof, adopt by not less than a two-thirds vote of all its members an ordinance in which shall be recited in full the amendment, repeal, or adoption proposed; such ordinance shall also recite that such amendment, repeal, or adoption is, in the opinion of the governing body, for the best interest of the municipality.

(b) Publication Made.—It shall direct publication over the name of the mayor or other chief officer of the municipality of a notice in substantially the following form (the blank spaces to be properly filled in):

Notice of Amendment to Charter of

....

(here insert name of municipality.)

The governing body of (here insert name of municipality) at a regular meeting held on the .. day of ...., 19.., adopted a resolution as follows (here copy verbatim the resolution).

Dated this .... day of ...., 19..

................., Mayor.

(c) Submitted to Vote.—The governing body shall in its resolution provide that the amendment, repeal, or adoption therein proposed shall not become effective until submitted to and approved by a majority of the votes cast at a regular municipal election or a special election called for that purpose, and such amendment, repeal or adoption shall be submitted to the qualified voters of the city at an election called and held for such purpose, or at a regular municipal election. Thereupon, if such amendment, repeal, or adoption shall have been approved by a majority of the votes cast as hereinbefore provided, such amendment, repeal, or adoption shall become effective.

(d) Manner of Publication.—The notice required shall be published once a week for four successive weeks in a newspaper of general circulation in the municipality. (1917, c. 136, sub-ch. 16, Part VII, ss. 2, 8; C. S., s. 2903.)

§ 160-355. Officers to be voted for.—The governing body of the town, if it submits the question of amending the charter of the town at a regular election so as to provide for a different number of members constituting the governing body of the town from that number provided for in the old charter, may also order an election to be held at said regular municipal election for the commissioners or members of the governing body provided for in the proposed amended charter, and at said election commissioners shall also be voted for as provided for under the old charter. If the proposed amendment is adopted, then the commissioners or members of the governing body elected under the proposed amendment shall constitute the governing body of the town for the ensuing term. If the proposed amendment is not adopted, the commissioners or the members of the governing body of said town elected under the provisions of the old charter shall constitute the governing body of the town for the ensuing term. (1919, c. 334; C. S., s. 2904.)

§ **160-356. Petition for amendment or repeal of charter.**—(a) Nature of Petition.—If any amendment, repeal, or adoption be initiated by the qualified electors of such municipality the same shall be by a petition signed by not less than twenty-five per centum of the qualified electors entitled to vote at the next preceding regular election in such municipality. The petition shall be appropriately entitled and shall be addressed to the governing board of such municipality, and shall state in exact language the amendment, repeal, or adoption proposed; the petition need not be all on one sheet, and if on one or more than one sheet shall be verified by a freeholder in such municipality who is also a signer of such petition. The petition shall contain a request to the governing body of the municipality to submit to the qualified electors thereof the amendment, repeal, or adoption as therein stated, either at a regular election or at a special election to be called for that purpose. It shall thereupon be the duty of the clerk of such municipality to examine the petition for the purpose of ascertaining whether the same has been signed by the required number of qualified electors of the municipality, and the clerk shall certify to the governing body the result of his investigation.

(b) Submitted to Vote.—Upon such certificate, it shall be the duty of the governing body to provide for submission to a vote of the amendment, repeal, or adoption proposed in the petition, either at a regular election or at a special election to be called for that purpose, and if the amendment, repeal, or adoption shall be approved by a majority of the votes cast, as hereinbefore provided, such amendment, repeal, or adoption shall become effective. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S., s. 2905.)

§ **160-357. Nature of verification.**—Whenever verification of any petition is provided or required to be made by this article, such verification shall consist of a written oath signed by the person making the same, which shall state in substance that the persons whose names appear signed to such petition were so signed by such persons respectively in the presence of the person making oath, and that, to the best of the knowledge and belief of the person making the oath, each of such persons is a qualified elector entitled to vote at the next preceding regular election in the municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 4; C. S., s. 2906.)

§ **160-358. Laws controlling elections.**—Whenever any election, either regular or special, is provided or required to be held under this article, such election shall be held under such laws, either general or special, as are at the time of the holding of such election in force and effect with reference to such municipality. (1917, c. 136, sub-ch. 16, Part VII, s. 5; C. S., s. 2907.)

§ **160-359. Several propositions voted on.**—Any number of amendments or repeals may be initiated by one and the same resolution or petition, and whenever under this article an election is provided or required to be held, any number of such amendments or repeals may be submitted and voted upon at one and the same election. (1917, c. 136, sub-ch. 16, Part VII, s. 6; C. S., s. 2908.)

§ **160-360. Limitations as to holding special elections.**—No special election provided or required by this article shall, except as otherwise provided in this subchapter, be held within two months of the time of holding any regular municipal election in any municipality; not more than two special elections may be held under this article in any municipality within any one year. The elections, subject to the other provisions of this section, shall be held within three months from the date of the filing of the petition. Any election heretofore called within three months from the date of filing any petition under this section and related sections is hereby validated. (1917, c. 136, sub-ch. 16, Part VII, s. 7; C. S., s. 2909; 1921, c. 56.)

Editor's Note.—The 1921 amendment added the last sentence, and substituted "within three months" in the second sentence for "not less than three months."

§ **160-361. Adoption or change certified and recorded.**—Upon the amendment, repeal, or adoption of a charter of any municipality as provided in this article, the governing body shall cause to be certified to the secretary of the Municipal Board of Control a copy of such amendment, repeal, or adoption duly certified by its clerk and under the seal of such municipality; the copy so certified shall be recorded in the office of the Secretary of State, and a copy shall be so certified by the Secretary of State to the clerk of the superior court of the county in which such municipality is situated and recorded in the office of the clerk; the record therein provided for, either in the office of the Secretary of State or in the office of the clerk of the superior court, shall be evidence in all the courts of this State. (1917, c. 136, sub-ch. 16, Part VII, s. 9; C. S., s. 2910.)

§ **160-362. Adoption or change ratified by vote.**—Whenever any amendment, repeal, or adoption of a charter of any municipality is submitted under the provisions of this article to the qualified electors of such municipality, such amendment, repeal, or adoption shall not become effective unless and until the same shall have been approved by a majority of the votes cast at the election and the result of the election thereon canvassed, determined, and declared as provided by law. (1917, c. 136, sub-ch. 16, Part VII, s. 10; C. S., s. 2911.)

§ **160-363. Plan not changed for two years.**—When any municipality shall, as provided in this subchapter, adopt any one of the plans as set forth in this subchapter, no amendment, repeal, or adoption of such plans shall be made until and after the expiration of two years from the date of the adoption of such plan. (1917, c. 136, sub-ch. 16, Part VII, s. 3; C. S., s. 2912.)

Article 24.

Elections Regulated.

§ **160-364. Laws governing elections.**—All elections called and held by any city for any purpose under the provisions of this subchapter shall be held under, governed and controlled by the laws in force at the time of such election governing and controlling regular and special municipal elections of such city in so far as they are applicable and not inconsistent with the provisions of this subchapter, and where not otherwise provided by law. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S., s. 2913.)

§ **160-365. Publication of notice.**—Except as otherwise provided in this subchapter, notice of every special election held in any city shall be published in a newspaper of general circulation in such city at least once a week for four weeks preceding the date of such election, and posted for thirty days at the door of the building in which the governing body holds its meetings and three other public places in the city. Such notice shall set forth the date and hours of such elections, the proposition to be voted on thereat, the location of the polling places, and, in the event a new registration is ordered for such election, shall so state and set forth the dates of opening and closing the registration books and the names and addresses of the several registrars in charge thereof. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S., s. 2914.)

§ 160-366. Time for holding elections.—If any city shall adopt any one of the plans of government provided for in this subchapter during the year nineteen hundred and seventeen, the election of city officers under such plan shall be held on Tuesday after the first Monday in May following the adoption of such plan, and the regular municipal elections of such city shall take place biennially thereafter. (1917, c. 136, sub-ch. 16, Part VIII, s. 1; C. S., s. 2915.)

SUBCHAPTER III. MUNICIPAL FINANCE ACT.

Article 25.

General Provisions.

§ 160-367. Short title.—This subchapter may be cited as "The Municipal Finance Act, 1921." (1917, c. 138, s. 1; 1919, c. 178, s. 3 (1); C. S., s. 2918; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References.—As to validation of municipal bonds, see § 159-50 et seq. As to local government acts, see chapter 159. As to application of sinking funds to purchase of municipality's own bonds, see §§ 153-148 and 153-150.

Editor's Note.—The attempt to amend and re-enact the Municipal Finance Act by Public Laws 1921, c. 8, was declared unconstitutional in Allen v. Raleigh, 181 N. C. 453, 107 S. E. 463 (1921), for failure of the General Assembly to comply with Art. II, § 14 of the Constitution. However, the amendment and re-enactment was successfully accomplished by Public Laws, Ex. Sess. 1921, c. 106.

Applicability to School Districts.—This does not deal with school districts. It, therefore, does not repeal the Acts of 1915, ch. 722. Waters v. Com'rs, 186 N. C. 719, 120 S. E. 450 (1923).

§ 160-368. Meaning of terms.—In this subchapter, unless the context otherwise requires, the expressions:

"Bond ordinance" means an ordinance authorizing the issuance of bonds of a municipality;

"Clerk" means the person occupying the position of clerk or secretary of a municipality;

"Financial officer" means the chief financial officer of a municipality;

"Funding bonds" means bonds issued to pay or extend the time of payment of debts not evidenced by bonds;

"Governing body" means the board or body in which the general legislative powers of a municipality are vested;

"Local improvement" means any improvements on property the cost of which has been or is to be specially assessed in whole or in part;

"Municipality" means and includes any city, town, or incorporated village in this State, now or hereafter incorporated;

"Necessary expenses" means the necessary expenses referred to in section seven of article seven of the Constitution of North Carolina;

"Publication" includes posting in cases where posting is authorized by this subchapter as a substitute for publication in a newspaper;

"Refunding bonds" means bonds issued to pay or extend the time of payment of debts evidenced by bonds;

"Special assessments" means special assessments for local improvements, levied on abutting property or other property specially benefited, or on street railroad companies or other companies or individuals having tracks in streets or highways, and "specially assessed" has a corresponding meaning. (1917, c. 138, s. 2; 1919, c. 178, s. 3 (2); 1919, c. 285, s. 1; C. S., s. 2919; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 46; 1933, c. 259, s. 1.)

Editor's Note.—The second 1921 amendment deleted the former provision relating to the determination of who is chief financial officer.

Prior to the 1933 amendment "funding bonds" and "refunding bonds" limited funding and refunding bonds to those issued for the payment of debts "incurred before July first, one thousand nine hundred and thirty-one." The quoted clause was deleted by the amendment.

§ 160-369. Publication of ordinance and notices.—An ordinance or notice required by this subchapter to be published by a municipality shall be published in a newspaper published in the municipality, or, if no newspaper is published therein, in a newspaper published in the county and circulating in the municipality, or, if there is no such newspaper, the ordinance or notice shall be posted at the door of the building in which the governing body usually holds its meetings and at three other public places in the municipality. (1917, c. 138, s. 3; 1919, c. 178, s. 3 (3); C. S., s. 2920; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

§ 160-370. Application and construction of subchapter.—This subchapter shall apply to all municipalities. Every provision of this subchapter shall be construed as being qualified by constitutional provisions, whenever such construction shall be necessary in order to sustain the constitutionality of any portion of this subchapter. If any portion of this subchapter shall be declared unconstitutional, the remainder shall stand, and the portion declared unconstitutional shall be exscinded. (1917, c. 138, ss. 4, 5; 1919, c. 178, s. 3 (4), (5); C. S., s. 2921; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

ARTICLE 26.

Budget and Appropriations.

§ 160-371. The fiscal year.—The fiscal year of every municipality shall begin on the first day of July, one thousand nine hundred thirty-one, and on the first day of July in each year thereafter. (1917, c. 138, s. 6; 1919, c. 178, s. 3 (6); C. S., s. 2922; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 66.)

Editor's Note.—Prior to the 1931 amendment the fiscal year of a municipality began either on the first day of June or September as the governing body might determine.

§ 160-372. Special revolving fund for municipalities to avoid borrowing money on anticipations.—In order to avoid the necessity of borrowing money in anticipation of the receipt of taxes and revenues or the proceeds of the sale of bonds, a municipality may by ordinance create a special revolving fund and with the consent of the Local Government Commission, provide for raising the same to be used in anticipation of the receipt of such moneys and to be replenished by means of such moneys when received. Withdrawals of money from said fund shall be made only for the purposes and within the amounts and for the periods and upon the conditions stated in §§ 160-373, 160-374 and/or 160-375, in respect to the borrowing of the money. Such withdrawals shall not be made unless approved by the Local Government Commission in the same manner as loans made under said sections. No ordinance creating such a fund shall be repealed or amended so as to divert or reduce the amount of the fund, without the approval of said Commission as to necessity or expediency. (1931, c. 60, s. 47.)

Cited in Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

ARTICLE 27.

Temporary Loans.

§ 160-373. Money borrowed to meet appropriations.—A municipality may borrow money for the purpose of meeting appropriations made for the current fiscal year, in anticipation of the collection of the taxes and revenues of such fiscal year, and within the amount of such appropriations. Such loans shall be paid not later than the tenth day of October in the next succeeding fiscal year. Provision shall be made in the annual budget and annual appropriation ordinance of each fiscal year for the payment of all unpaid loans predicated upon the taxes and revenues of the previous fiscal year. (1917, c. 138, s. 12; 1919, c. 178, s. 3 (12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References.—As to the power of the governing body to delegate authority to fix face amount, rate of interest, time of maturity, place of payment, etc., see § 159-43. As to application to Local Government Commission for issuance of notes, see § 159-7 et seq.

§ **160-374. Money borrowed to pay judgments or interest.**—For the purpose of paying a judgment recovered against a municipality, or paying the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, a municipality may borrow money in anticipation of the receipt of either the revenues of the fiscal year in which the money is borrowed or the revenues of the next suceeding fiscal year. Such loans shall be paid not later than the end of such next succeeding fiscal year. In the event, however, that a judgment or judgments against a municipality amount to more than one cent per hundred dollars of the assessed valuation of taxable property of the municipality for the year in which taxes were last levied before the recovery of the judgment, a loan to pay the judgment may be made payable in not more than five substantially equal annual installments, beginning within one year after the loan is made. For the purpose of paying or renewing notes evidencing indebtedness incurred before July first, one thousand nine hundred thirty-three, and authorized by this subchapter as amended, to be funded, any municipality may issue new notes from time to time until such indebtedness is paid out of revenues or funded into bonds. Such new notes may be made payable at any time or times not later than five years after the first day of July, one thousand nine hundred thirty-three, notwithstanding anything to the contrary in this section.

In addition to the foregoing powers, a municipality may borrow money for the purpose of refunding or funding the principal or interest of bonds due or to become due within two months and not otherwise adequately provided for, and such loans shall be paid not later than the end of the next succeeding fiscal year following the fiscal year within which they are made: Provided, however, if such loans, or any renewals thereof, shall not be paid within the fiscal year in which the same are made, the governing body shall in the next succeeding fiscal year levy and collect a tax ad valorem upon the taxable property in the municipality sufficient to pay the principal and interest thereof. (1919, c. 178, s. 3 (12); C. S., s. 2933; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 64; 1933, c. 259, s. 1; 1939, c. 231, s. 1.)

Editor's Note.—By the second 1921 amendment this section was made applicable to a judgment or judgments and bonds, where before the amendment it provided for a judgment and debts.

The 1931 amendment added the last two sentences of the first paragraph, and the 1933 amendment changed the date in said sentences from January 1, 1931, to July 1, 1933. The 1939 amendment added the second paragraph.

City May Anticipate Collection of Taxes.—Where the levy of taxes had been approved by the qualified voters of the city, the city, under this section, has the authority to borrow money to pay judgments in anticipation of the collection of taxes validly levied for that purpose. Hammond v. Charlotte, 206 N. C. 604, 175 S. E. 148 (1934).

§ **160-375. Money borrowed in anticipation of bond sales.**—At any time after a bond ordinance has taken effect as provided in article 28 herein, a municipality may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. Such loans shall be paid not later than five years after the time of taking effect of the ordinance authorizing the bonds upon which they are predicated. The governing body may, in its discretion, retire any such loans by means of current revenues, special assessments, or other funds, in lieu of retiring them by means of bonds: Provided, however, that the governing body, before the actual retirement of any such loan by any means other than the issuance of bonds, under the bond ordinance upon which such loan is predicated, shall amend or repeal such ordinance so as to reduce the authorized amount of the bond issue by the amount of the loan to be so retired. Such an amendatory or repealing ordinance shall take effect upon its passage and need not be published. (1917, c. 138, s. 13; 1919, c. 178, s. 3 (13); C. S., s. 2934; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1953, c. 693, s. 4.)

Editor's Note.—This section was re-enacted without change by the second 1921 amendment.

The 1953 amendment substituted "five years" for "three years" in the second sentence.

§ **160-376. Notes issued for temporary loans.**—Negotiable notes shall be issued for all moneys borrowed under the last three sections. Such notes may be renewed from time to time and money may be borrowed upon notes from time to time for the payment for any indebtedness evidenced thereby, but all such notes shall mature within the time limited by said sections for the payment of the original loan. No money shall be borrowed under said sections at a rate of interest exceeding the maximum rate permitted by law. The said notes may be disposed of by public or private negotiations as provided in the Local Government Act. The issuance of such notes shall be authorized by resolution of the governing body, which shall fix the actual or maximum face amount of the notes and the actual or maximum rate of interest to be paid upon the amount borrowed. The governing body may delegate to any officer the power to fix said face amount and rate of interest within the limitations prescribed by said resolution. All such notes shall be executed in the manner provided in § 160-393 of this subchapter in relation to bonds. They shall be submitted to and approved by the attorney for the municipality before they are issued, and his written approval endorsed on the notes. The resolution authorizing issuance of notes for money borrowed under § 160-374 for the purpose of refunding or funding principal or interest of bonds shall contain a description of the bonds the principal or interest of which is to be so paid, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. (1917, c. 138, s. 14; 1919, c. 178, s. 3 (14); C. S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 293; 1939, c. 231, s. 1.)

Cross Reference.—As to sale of notes at public or private sale, see §§ 159-13, 159-14 and 159-15.

Editor's Note.—By the second 1921 amendment negotiable notes were provided for instead of "notes", and provision was made for maximum rate of interest instead of six per cent. Provision was also made for private or public negotiation, and the power to fix the face amount was vested in "any officer" appointed by the governing body instead of "the financial officer or chief executive officer."

The 1931 amendment substituted "three" for "two" in the first sentence of this section, and the 1939 amendment added the last sentence.

ARTICLE 28.

Permanent Financing.

§ **160-377. Not applied to temporary loans.**—The provisions of this article shall not apply to temporary loans made under article 27, unless otherwise provided in said article. (1917, c. 138, s. 15; 1919, c. 178, s. 3 (15); C. S., s. 2936; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment the application of this article was qualified by adding the last six words.

In General.—Prior to the decision in Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029, 101 Am. St. Rep. 825, 63 L. R. A. 870 (1903), It was held that the construction and maintenance of a system of light, water and sewerage was not within the meaning of the words, "necessary expenses," as used in the State Constitution, Art. VII, § 7. In that case the court expressly overruled the earlier cases. Mayo v. Commissioners, 122 N. C. 5, 29 S. E. 343, 40 L. R. A. 163 (1898). This decision has been uniformly approved and is now the accepted law of the State. In accordance with these decisions the legislature enacted the Municipal Finance Act. Hill v. Elizabeth City, 291 F. 194 (1923).

Cited in Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

§ 160-378. For what purpose bonds may be issued.—A municipality may issue its negotiable bonds for any one or more of the following purposes:

(1) For any purpose or purposes for which it may raise or appropriate money, except for current expenses.

(2) To fund or refund a debt of the municipality if such debt be payable at the time of the passage of the ordinance authorizing bonds to fund or refund such debt or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "debt" as used in this subdivision (2) includes all valid or enforceable debts of a municipality, whether incurred for current expenses or for any purpose. It includes debts evidenced by bonds, bond anticipation notes, revenue anticipation notes, judgments and unpaid interest on said debts accrued to the date of the bonds issued. Bond anticipation notes evidencing debts incurred before July first, one thousand nine hundred thirty-three, may, at the option of the governing body, be retired either by means of funding bonds issued under this section or by means of bonds in anticipation of the sale of which the notes were issued. It also includes debts assumed by a municipality as well as debts created by a municipality. Furthermore, the said word "debt" as used in this section includes the principal of and accrued interest on funding bonds, refunding bonds, and other evidences of indebtedness heretofore or hereafter issued. The above enumeration of particular kinds of debt shall be construed as limiting the word "debt" as used in this section, the intention being that said word shall include debts of every kind and character. Bonds hereafter issued to fund or refund interest may, at the option of the governing body, be named or designated as certificates of indebtedness. No interest accruing after the year one thousand nine hundred and forty-six shall be funded or refunded.

(3) To pay any revenue bonds issued by the municipality pursuant to the Revenue Bonds Act of 1938 to finance any undertaking or undertakings mentioned in subparagraphs 1 and 2 of paragraph 5 of subdivision (5) of § 160-414 of said Revenue Bond Act, whether wholly within or partially within and partially without the municipality, if such revenue bonds are payable at the time of the passage of the ordinance or ordinances authorizing such negotiable bonds or be payable within one year thereafter or, although payable more than one year thereafter, are to be canceled prior to their maturity and simultaneously with the issuance of such negotiable bonds: Provided that the issuance of such negotiable bonds and the ordinance or ordinances authorizing the same shall be approved by the voters of the municipality at an election as provided in this subchapter. Such negotiable bonds may be disposed of by sale pursuant to the provisions of the Local Government Act or, upon request of the governing body of the municipality and with the consent of the holder of such revenue bonds, the Local Government Commission through the State Treasurer may exchange any such negotiable bonds for a like amount of such revenue bonds and make such adjustment of accrued interest as may be requested by said governing body, in which event the publication of notice as provided in § 159-13 of the Local Government Act shall not be required. (1917, c. 138, s. 16; 1919, c. 178, s. 3 (16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 48; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1939, c. 231, s. 1; 1943, c. 13; 1945, c. 403; 1957, c. 856, s. 1.)

Local Modification.—Town of Columbus: 1959, c. 719; town of Lake Lure: 1953, c. 1057; town of Walnut Cove: 1949, c. 987.

Cross Reference.—As to necessity of application to Local Government Commission for issuance of bonds, see § 159-7.

Editor's Note.—The 1921 amendment inserted "negotiable" before "bonds" in the preliminary paragraph and made other changes. The 1933 amendment struck out the provision changed by the 1931 amendment and inserted the third and fourth sentences of subdivision (2).

The 1935 amendment substituted "incurred" for "issued" in the second sentence of subdivision (2). It also added the last four sentences of the subdivision.

The 1939 amendment changed the year in the last sentence of subdivision (2) from 1938 to 1940. The 1943 amendment changed the year to 1942, and the 1945 amendment changed it to 1946.

The 1957 amendment added subdivision (3).

Power to Hold Election Implied.—This section impliedly confers the power to hold the necessary election. Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

Bonds Issued by School Trustees.—The board of trustees of a city school is an official board of the city and under this section bonds may be issued to pay the indebtedness they have incurred in operating the school. Jones v. New Bern, 184 N. C. 131, 113 S. E. 663 (1922).

Refunding Bonds.—Under the provisions of this and the following section an ordinance authorizing the issuance of refunding bonds need not be submitted to the voters. A municipal corporation does not contract a debt, within the meaning of Art. VII, § 7, of the Constitution, when under statutory authority it issues bonds to refund bonds which at the date of the issuance of the refunding bonds are valid and enforceable obligations of the municipality. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361 (1932).

Issuance of Bonds Pursuant to Section Not Enjoined.—The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters is conferred on a municipality by this section and § 160-230, and where the other statutes relevant have been duly followed, the bonds so issued are a valid obligation of the town issuing them, and their issuance will not be enjoined by the courts. Burleson v. Spruce Pine Board of Aldermen, 200 N. C. 30, 156 S. E. 241 (1930).

§ **160-379. Ordinance for bond issue.**—(a) Ordinance Required.—All bonds of a municipality shall be authorized by an ordinance passed by the governing body.

(b) What Ordinance Must Show.—The ordinance shall state:

(1) In brief and general terms the purpose for which the bonds are to be issued, including, in the case of funding or refunding bonds a brief description of the indebtedness to be funded or refunded sufficient to identify such indebtedness;

(2) The maximum aggregate principal amount of the bonds;

(3) That a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected: Provided, in lieu of the foregoing and in the case of funding or refunding bonds, such statement with respect to an annual tax may, in the discretion of the governing body, be altered or omitted;

(4) That a statement of the debt of the municipality has been filed with the clerk and is open to public inspection;

(5) One of the following provisions:

a. If the bonds are funding or refunding bonds or for local improvements of which at least one-fourth of the cost, exclusive of the cost of paving at street intersections, has been or is to be specially assessed, that the ordinance shall take effect upon its passage, and shall not be submitted to the voters; or

b. If the issuance of the bonds is required by the Constitution to be approved by the voters, or if the governing body, although not required to obtain the approval of the voters before issuing the bonds, deems it advisable to obtain such approval, that the ordinance shall take effect when approved by the voters of the municipality at an election as provided in this subchapter; or

c. In any other case, that the ordinance shall take effect thirty days after its first publication (or posting) unless in the meantime a petition for its submission to the voters is filed under this subchapter, and that in such event it shall take effect when approved by the voters of the municipality at an election as provided in this subchapter.

(6) In the case of bonds to pay any revenue bonds issued for one or more

undertakings constituting two or more unrelated purposes under the provisions of this subchapter, a statement of such purposes and the proportion of the proceeds of such revenue bonds determined by the governing body to have been applied to each such purpose, which determination shall be conclusive, and bonds to pay each such proportion of the revenue bonds, as nearly as may be within a multiple of $1,000, shall be authorized by separate ordinances.

(c) When the Ordinance Takes Effect.—A bond ordinance shall take effect at the time and upon the conditions indicated therein. If the ordinance provides that it shall take effect upon its passage no vote of the people shall be necessary for the issuance of the bonds.

(d) Need Not Specify Location of Improvement.—In stating the purpose of a bond issue, a bond ordinance need not specify the location of any improvement or property, or the kind of pavement or other material to be used in the construction or reconstruction of streets, highways, sidewalks, curbs, or gutters, or the kind of construction or reconstruction to be adopted for any building, for which the bonds are to be issued. A description in a bond ordinance of a property or improvement substantially in the language employed in § 160-382 of this subchapter to describe such a property or improvement, shall be a sufficiently definite statement of the purpose for which the bonds authorized by the ordinance are to be issued.

(e) Application of Other Laws.—No restriction, limitation or provision contained in any special, private or public-local law relating to the issuance of bonds, notes or other obligations of a municipality shall apply to bonds or notes issued under this subchapter for the purpose of refunding, funding or renewing indebtedness, and no vote of the people shall be required for the issuance of bonds or notes for said purpose, unless required by the Constitution of this State. The special, private and public-local laws here referred to include all such laws enacted prior to the expiration of the regular session of the General Assembly in the year one thousand nine hundred thirty-five. Nothing herein shall be construed, however, as prohibiting a municipality from issuing bonds or notes under any special, private or public-local law applicable to such municipality, it being intended that this subchapter shall be cumulative and additional authority for the issuance of bonds and notes. (1917, c. 138, s. 17; 1919, c. 178, s. 3 (17); 1919, c. 285, s. 2; C. S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 49; 1933, c. 259, s. 1; 1935, c. 302, s. 1; 1949, c. 497, s. 3; 1957, c. 856, s. 2.)

Cross References.—As to provisions which may, upon the approval of the Local Government Commission, be included in the ordinance for bond issue, see § 159-46. As to provision for accelerating the maturity of bonds and notes, see § 153-81.

Editor's Note.—The 1921 amendment made changes in subsection (b). The 1933 amendment changed subsection (b) by adding the requirement for a brief description of indebtedness in subdivision (1) of subsection (b) and the proviso to subdivision (1) of such subsection. It also deleted from subsection (e) the former limitation that the indebtedness must have been incurred before July 1, 1931. The 1935 amendment added the last two sentences of subsection (e). And the 1949 amendment rewrote paragraph (b) of subdivision (5) of subsection (b).

The 1957 amendment inserted subdivision (6) of subsection (b).

Ordinance Must Comply with Statutes.—It is not required by the various statutes on the subject that a bond ordinance of a municipality set forth in express terms the proportion of the cost of the proposed improvements which has been, or is to be, assessed against the property of each owner abutting upon the streets to be improved or the terms and method of making the payment, if the procedure follow the direction of the statutes relating to the subject. Leak v. Wadesboro, 186 N. C. 683, 121 S. E. 12 (1923).

Subsequent Ratification of Bond Issue.—If a school board borrows money and the debt is taken up by an election this ratification renders unimportant the question of whether or not the money was borrowed for necessary purposes. Jones v. New Bern, 184 N. C. 131, 113 S. E. 663 (1922).

A statement that a tax sufficient to pay the principal and interest of the bonds shall be annually levied and collected may be omitted in the ordinance in the case of funding or refunding bonds in the discretion of the governing board of the town. Garner v. Newport, 246 N. C. 449, 98 S. E. (2d) 505 (1957).

Absence of Intent to Annex in Bond

Ordinance and Ballots.—Where there is no irregularity in the authorization of municipal bonds for its water and sewer systems, and in the city's notice of intent to annex certain areas it is stated that it intended to use certain of the proceeds of the bonds for the construction of water and sewer lines in areas intended to be annexed, the fact that neither the bond ordinance nor the ballots used in the election at which the issuance of the bonds was approved disclosed such intent does not affect the validity of the bonds. Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

Cited in Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24 (1927).

§ **160-380. Ordinance not to include unrelated purposes.**—Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same ordinance: Provided, however, that bonds for two or more improvements or properties mentioned together in any one clause of subsection (d) of § 160-382 of this subchapter may be treated as being but for one purpose, and may be authorized by the same bond ordinance. After two or more bond ordinances have been passed, the governing body may, in its discretion, direct all or any of the bonds authorized by the ordinances to be actually issued as one consolidated bond issue. Separate issues of funding and/or refunding bonds may be made under authority of the same bond ordinance for the retirement of two or more different debts or classes of debts. (1919, c. 178, s. 3 (17); 1919, c. 285, s. 3; C. S., s. 2939; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Editor's Note.—The second 1921 amendment deleted a provision in next to the last sentence which required the bond ordinance to "have taken effect," before a consolidated bond issue could be had. The 1933 amendment added the last sentence.

§ **160-381. Ordinance and bond issue; when petition required.**—In cases where a petition of property owners is required by law for the making of local improvements, a bond ordinance authorizing bonds for such local improvements may be passed before any such petition is made, but no bonds for the local improvements in respect of which such petitions are required shall be issued under the ordinance, nor shall any temporary loan be contracted in anticipation of the issuance of such bonds, unless and until such petitions are made, and then only up to the actual or estimated amount of the cost of the work petitioned for. The determination of the governing body as to the actual or estimated cost of work so petitioned for shall be conclusive in any action involving the validity of bonds or notes or other indebtedness. The bond ordinance may be made to take effect upon its passage, notwithstanding that the necessary petitions for the local improvements have not been filed: Provided, that it appears upon the face of the ordinance that one-fourth or some greater proportion of the cost, exclusive of the cost of work at street intersections, has been or is to be assessed. (1919, c. 178, s. 3 (17); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ **160-382. Determining periods for bonds to run.**—(a) How Periods Estimated.—Either in the bond ordinance or in a resolution passed after the bond ordinance but before any bonds are issued thereunder, the governing body shall, within the limits prescribed by subsection (d) of this section, determine and declare:

(1) The probable period of usefulness of the improvements or properties for which the bonds are to be issued; or

(2) If the bonds are to be funding or refunding bonds, either the shortest period in which the debt to be funded or refunded can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, or, at the option of the governing body, the probable unexpired period of usefulness of the improvement or property for which the debt was incurred

(b) Average of Periods Determined.—In the case of a consolidated bond issue comprising bonds authorized by different ordinances for different purposes, and in the case of a bond issue authorized by but one ordinance for several related purposes in respect of which several different periods are determined as aforesaid, the governing body shall also determine the average of the different periods so determined, taking into consideration the amount of bonds to be issued on account of each purpose or item in respect of which a period is determined.

The period required to be determined as aforesaid shall be computed from a date not more than one year after the time of passage of any bond ordinance authorizing the issuance of the bonds. The determination of any such period by the governing body shall be conclusive.

(c) Maturity of Bonds.—The bonds must mature within the period determined as aforesaid, or, if several different periods are so determined, then within said average period.

(d) Periods of Usefulness.—In determining, for the purpose of this section, the probable period of the usefulness of an improvement or property, the governing body shall not deem said period to exceed the following periods for the following improvements and properties, respectively, viz.:

(1) Sewer systems (either sanitary or surface drainage), forty years.

(2) Water supply systems, or combined water and electric light systems, or combined water, electric light, and power systems, forty years.

(3) Gas systems, thirty years.

(4) Electric light and power systems, separate or combined, thirty years.

(5) Plants for the incineration or disposal of ashes, or garbage, or refuse (other than sewage), twenty years.

(6) Public parks (including or not including a playground, as a part thereof, and any buildings thereon at the time of acquisition thereof, or to be erected thereon, with the proceeds of the bonds issued for such public parks), fifty years.

(7) Playgrounds, fifty years.

(8) Buildings for purposes not stated in this section, if they are:

a. Of fireproof construction, that is, a building the walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, and in which there are no wood beams or lintels, and in which the floors, roofs, stair halls, and public halls are built entirely of brick, stone, iron, or other hard, incombustible materials, and in which no woodwork or other inflammable materials are used in any of the partitions, floorings, or ceiling (but the building shall be deemed to be of fireproof construction notwithstanding that elsewhere than in the stair halls and entrance halls there is a wooden flooring on top of the fireproof floor, and that wooden sleepers are used, and that it contains wooden handrails and treads, made of hardwood, not less than two inches thick), forty years.

b. Of nonfireproof construction, that is, a building the outer walls of which are constructed of brick, stone, iron, or other hard, incombustible materials, but which in any other respect differs from a fireproof building as defined in this section, thirty years.

c. Of other construction, twenty years.

(9) Bridges and culverts (including retaining walls and approaches), forty years, unless constructed of wood, and in that case, ten years.

(10) Land for purposes not stated in this section, fifty years.

(11) Constructing or reconstructing the surface of roads, streets, or highways, whether including or not including contemporaneous constructing or reconstructing of sidewalks, curbs, gutters, or drains, and whether including or not including grading, if such surface:

a. Is constructed of sand and gravel, five years;

b. Is of waterbound macadam or penetration process, ten years;

c. Is of bricks, blocks, sheet asphalt, bitulithic, or bituminous concrete, laid on a solid foundation, or is of concrete, twenty years.

(12) Land for roads, streets, highways, or sidewalks, or grading, or constructing or reconstructing culverts, or retaining walls, or surface, or subsurface drains, fifty years.

(13) Constructing sidewalks, curbs, or gutters of brick, stone, concrete, or other material of similar lasting character, twenty years.

(14) Installing fire or police alarms, telegraph or telephone service, or other system of communication for municipal use, thirty years.

(15) Fire engines, fire trucks, hose carts, ambulances, patrol wagons, or any vehicles for use in any department of the municipality, or for the use of municipal officials, ten years.

(16) Land for cemeteries, or the improvement thereof, thirty years.

(17) Constructing sewer, water, gas, or other service connections, from the service main in the street to the curb or property line, when the work is done by the municipality in connection with any permanent improvement of or in any street, ten years.

(18) The elimination of any grade crossing or crossings and improvements incident thereto, thirty years.

(19) Equipment, apparatus, or furnishings not included in the foregoing subdivisions of this subsection, ten years.

(20) Any improvement or property not included in other subdivisions of this subsection, forty years.

(21) Land for airports or landing fields, including grading and drainage, forty years.

(22) Buildings and equipment and other improvements of airports or landing fields, other than grading and drainage, ten years.

(e) Improvements and Properties Defined.—The maximum periods fixed herein for the improvements and properties mentioned in subdivisions numbered from (1) to (9), both inclusive, of subsection (d) of this section shall be applied thereto whether such improvements or properties are to be acquired, constructed, reconstructed, enlarged, or extended, in whole or in part, and whether the same are to include or are not to include buildings, lands, rights in lands, furnishings, equipment, machinery, or apparatus constituting a part of said improvements or properties at the time of acquisition, construction, or reconstruction. If the improvements of properties are to be an enlargement or extension of existing properties or improvements, the probable period of usefulness to be determined as aforesaid may be either that of the existing properties or improvements; or that of the enlargement or extension. Bonds for any or all improvements or properties included in any one subdivision of subsection (d) above may for the purposes of this section be deemed by the governing body to be for but one improvement or property.

(f) Kind of Construction Determined.—If the bonds are for a building referred to in subdivision (8) of subsection (d) above, and the bond ordinance does not state the kind of construction of the building, or if the bonds are for street improvements mentioned in subdivision (11) of subsection (d) above, and the bond ordinance does not state the kind or kinds of pavement or other material to be used, then the kind of construction, or the kind or kinds of pavement or other material, as the case may be, shall be determined by resolution before any of the bonds are issued.

(g) Period of Payment.—In determining for the purpose of this section the shortest period in which a debt to be funded or refunded hereunder can be finally paid without making it unduly burdensome upon the taxpayers of the municipality, the governing body shall not deem said period to be greater than fifty years. (1917, c. 138, s. 18; 1919, c. 178, s. 3 (18); C. S., s. 2942; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1929, c. 170; 1931, c. 60, s. 50; 1931, cc. 188, 301; 1933, c. 259, s. 1.)

Editor's Note.—The second 1921 amendment rewrote this section. The 1929 amendment, which inadvertently referred to the wrong section, added the last two paragraphs under subsection (d). The first 1931 amendment rewrote subsection (g), the second 1931 amendment corrected the erroneous reference in the 1929 act, and the third 1931 amendment also added the two paragraphs inserted by the 1929 act.

The only change effected by the 1933 amendment occurs in subsection (g). The limitation was formerly thirty years if the gross debt of the county was less than twelve percent of the assessed valuation, and fifty years in other cases. The amendment made the limitation fifty years in all cases.

Maturity of Refunding Bonds.—Under this section the period for maturity of refunding bonds is in the discretion of the governing body of the city issuing them. Bolich v. Winston-Salem, 202 N. C. 786, 164 S. E. 361 (1932).

Cited in Jones v. Durham, 197 N. C. 127, 147 S. E. 824 (1929); Austin v. Shaw, 235 N. C. 722, 71 S. E. (2d) 25 (1952).

§ **160-383. Sworn statement of indebtedness.**—(a) What Shall be Shown.—After the introduction and before the final passage of a bond ordinance an officer designated by the governing body for that purpose shall file with the clerk a statement showing the following:

(1) The gross debt (which shall not include debt incurred or to be incurred in anticipation of the collection of taxes or in anticipation of the sale of bonds other than funding and refunding bonds), which gross debt shall be as follows:
  - a. Outstanding debt not evidenced by bonds.
  - b. Outstanding bonded debts.
  - c. Bonded debt to be incurred under ordinances passed or introduced.

(2) The deductions to be made from gross debt in computing net debt, which deductions shall be as follows:
  - a. Amount of unissued funding or refunding bonds included in gross debt.
  - b. Amount of sinking funds or other funds held for the payment of any part of the gross debt other than debt incurred for water, gas, electric light, or power purposes or two or more of said purposes.
  - c. The amount of uncollected special assessments theretofore levied on account of local improvements for which any part of the gross debt was or is to be incurred which will be applied when collected to the payment of any part of the gross debt.
  - d. The amount, as estimated by the engineer of the municipality or officer designated for that purpose by the governing body or by the governing body itself, of special assessments to be levied on account of local improvements for which any part of the gross debt was or is to be incurred, and which, when collected, will be applied to the payment of any part of the gross debt.
  - e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes, or two or more of said purposes.
  - f. The amount of existing bonded debt included in the gross debt, and incurred or to be incurred for the construction of sewerage systems or sewage disposal plants where said sewerage system is entirely supported by sewerage service charges or when said systems or plants are operated together with the waterworks as a combined and consolidated system and as an integral part thereof, and when the amount necessary to meet the annual interest payable on the debt, and the annual installment necessary for the amortization of the debt, and the amount necessary for repairs, maintenance and operation of said system or systems is included in the rate for waterworks service and so collected by the municipality.
  - g. The amount which the municipality shall be entitled to receive from any railroad or street railway company under contract theretofore made for payment by such company of all or a portion of the

cost of eliminating a grade crossing or crossings within the municipality, which amount will be applied when received to the payment of any part of the gross debt.

h. Indebtedness for school purposes.

(3) The net debt, being the difference between the gross debt and the deductions.

(4) The assessed valuation of property as last fixed for municipal taxation.

(5) The percentage that the net debt bears to said assessed valuation.

(b) Limitations upon Passage of Ordinance.—The ordinance shall not be passed unless it appears from said statement that the said net debt does not exceed eight (8) per cent of said assessed valuation, unless the bonds to be issued under the ordinance are to be funding or refunding bonds, or are bonds for water, gas, electric light or power purposes, or two or more of said purposes or are bonds for sanitary sewers sewage disposal or sewage purification plans, the construction of which shall have been ordered by the State Stream Sanitation Committee, which Committee is hereby authorized to make such order, or by a court of competent jurisdiction or are bonds for erosion control purposes or are bonds for erecting jetties or other protective works to prevent encroachment by the ocean, sounds or other bodies of water.

(c) Statement Filed for Inspection.—Such statements shall remain on file with the clerk and be open to public inspection. In any action or proceeding in any court involving the validity of bonds, said statement shall be deemed to be true and to comply with the provisions of this subchapter, unless it appears (in an action or proceeding commenced within the time limited by § 160-385 for the commencement thereof), first, that the representations contained therein could not by any reasonable method of computation be true; and second, that a true statement would show that the ordinance authorizing the bonds could not be passed. (1917, c. 138, s. 19; 1919, c. 178, s. 3 (19); 1919, c. 285, s. 4; C. S., s. 2943; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; 1933, c. 321; Ex. Sess. 1938, c. 3; 1955, c. 1045; 1959, c. 779, s. 10.)

Local Modification.—Alamance, city of Burlington: 1933, c. 344; Columbus, town of Whiteville: 1947, c. 42; Mecklenburg, Translyvania: 1933, c. 321; city of Charlotte: 1959, cc. 30, 871.

Cross Reference.—As to limitation of debts prior to this section, see § 160-64.

Editor's Note.—The second 1921 amendment rewrote this section. The 1927 amendment inserted paragraphs g and h of subdivision (2) of subsection (a). The 1931 amendment changed the date in paragraph a of subdivision (1) of subsection (a), and the first 1933 amendment eliminated the provision containing the date. The second 1933 amendment inserted paragraph f of subdivision (2) of subsection (a).

The 1938 amendment made subsection (b) applicable to bonds for erosion control and bonds for erecting jetties, etc.

The 1955 amendment inserted "or by the State Stream Sanitation Committee, which Board or Committee is hereby authorized to make such order," in subsection (b). The 1959 amendment deleted references to the State Board of Health in subsection (b).

Bonds Including Amount of Assessment.—Where a town has issued bonds for general street improvements under legislative authority, and includes the amount required for local improvements by assessment of owners of lands abutting a particular street improved, it may charge off from the proceeds of the sale of the bonds the estimated amount to be realized by the special assessments under the provisions of subsection (a), 2 of this section. Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41 (1923).

Bonds issued by a municipality for water and sewer systems should be deducted from the gross debt in computing the net debt of the municipality in relation to the prohibition against incurring debt in excess of eight per cent of the assessed valuation of property for taxation, bonds for sewer systems being necessarily included in bonds for "water purposes" within the meaning of subsection (a), (2) Lamb v. Randleman, 206 N. C. 837, 175 S. E. 293 (1934).

Such bonds do not come within the inhibition of subsection (b), against incurring debt in excess of eight per cent of the assessed valuation. Lamb v. Randleman, 206 N. C. 837, 175 S. E. 293 (1934).

§ 160-384. Publication of bond ordinance.—A bond ordinance shall be published once in each of two successive weeks after its final passage. A notice substantially in the following form (the blanks being first properly filled in), with the printed or written signature of the clerk appended thereto, shall be published with the ordinance:

The foregoing ordinance was passed on the .... day of ...., 19.., and was first published (or posted), on the .... day of ...., 19...

Any action or proceeding questioning the validity of said ordinance must be commenced within thirty days after its first publication (or posting).

........................,
Clerk (or Secretary).

(1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); C. S., s. 2944; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment publication is required only twice where formerly it was required four times, except that when it was to take effect at once, then only one publication was required.

§ 160-385. Limitation of action to set aside ordinance.—Any action or proceeding in any court to set aside a bond ordinance, or to obtain any other relief upon the ground that the ordinance is invalid, must be commenced within thirty days after the first publication of the notice aforesaid and the ordinance or supposed ordinance referred to in the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the ordinance shall be asserted, nor shall the validity of the ordinance be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1917, c. 138, s. 20; 1919, c. 49, s. 1; 1919, c. 178, s. 3 (20); C. S., s. 2945; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

Right to Test Constitutionality Not Affected.—In construing a similar provision with reference to bond issues by counties, it was held that the statute did not prevent a suit to determine the constitutionality of the bond issue. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

§ 160-386. Ordinance requiring popular vote.—(a) When Vote Required.—If a bond ordinance provides that it shall take effect thirty days after its first publication unless a petition for its submission to the voters shall be filed in the meantime, the ordinance shall be inoperative without the approval of the voters of the municipality at an election if a petition shall be filed as provided in this section.

(b) Petition Filed.—A petition demanding that a bond ordinance be submitted to the voters may be filed with the clerk within thirty days after the first publication of the ordinance. The petition shall be in writing and signed by voters of the municipality equal in number to at least twenty-five per centum of the total number of registered voters in the municipality as shown by the registration books for the last preceding election for municipal officers therein. The residence address of each signer shall be written after his signature. Each signature to the petition shall be verified by a statement (which may relate to a specified number of signatures), made by some adult resident freeholder of the municipality, under oath before an officer competent to administer oaths, to the effect that the signature was made in his presence and is the genuine signature of the person whose name it purports to be. The petition need not contain the text of the ordinance to which it refers. The petition need not be all on one sheet, and if on more than one sheet, it shall be verified as to each sheet.

(c) Sufficiency of Petition.—The clerk shall investigate the sufficiency of the petition and present it to the governing body with a certificate stating the result of his investigation. The governing body shall thereupon determine the sufficiency of the petition and the determination of the governing body shall be conclusive. (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; 1919, c. 178, s. 3 (21); C. S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 102, s. 2.)

Editor's Note.—The second 1921 amendment changed the required number of petitioning voters from thirty-three and one-third per centum to twenty-five per centum.

Where Vote of Qualified Electors Not Necessary.—Where an ordinance for the issuance of bonds to establish and maintain playgrounds for children contained a provision which afforded the prescribed time for filing a petition under this section, and no petition was filed during such time, it was held that irrespective of such provision a vote of the qualified electors was not necessary, the bonds being a necessary expense within the meaning of Art. VII, § 7 of the Constitution. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936).

Injunction against Bond Issue.—See Hill v. Elizabeth City, 291 F. 194 (1923), construing subsection (a), and holding that there was no valid objection to proceedings taken by board of aldermen, entitling plaintiff to enjoin issuance of bonds.

Cited in Smith v. Carolina Beach, 206 N. C. 834, 175 S. E. 313 (1934).

§ 160-387. Elections on bond issue.—(a) What Majority Required.—If a bond ordinance provides that it shall take effect when approved by the voters of the municipality, the affirmative vote of a majority of those who shall vote on the bond ordinance shall be required to make it operative.

(b) When Election Held.—Whenever the taking effect of an ordinance authorizing the issuance of bonds is dependent upon the approval of the ordinances by the voters of a municipality, the governing body may submit the ordinance to the voters at an election to be held not more than six months after the passage of the ordinance. The governing body may call a special election for that purpose or may submit the ordinance to the voters at the regular municipal election next succeeding the passage of the ordinance, but not such special election shall be held within one month before or after a regular election. Several ordinances or other matters may be voted upon at the same election. The governing body shall not call a special election for the sole and exclusive purpose of submitting to the voters the proposition of approving or disapproving an ordinance for the issuance of bonds for the purchase of voting machines, but such ordinance may be submitted at any regular municipal election or at any special election at which another ordinance or another matter is to be voted upon.

(c) New Registration.—The governing body of the city or town in which such election is held may, in their discretion, order a new registration of the voters for such election. The books for such new registration shall remain open in each precinct from nine a. m. to six p. m. on each day, except Sundays and holidays, for three weeks, beginning on a Monday morning and ending on the second Saturday evening before the election. A registrar and two judges of election shall be appointed by the governing body for each precinct: Provided, that the books shall be open at the polling places on each Saturday during the registration period. Sufficient notice shall be deemed to have been given of such new registration and of the appointment of the election officers if a notice thereof be published at least thirty (30) days before the closing of the registration books, stating the hours and days for registration. It shall not be necessary to specify in said notice the places for registration. In case the registrar shall fail or refuse for any cause to perform his duties, it shall be lawful for the clerk to appoint another person to perform such duties, and no notice of such appointment shall be necessary.

(d) Notice of Election.—A notice of the election shall be deemed sufficiently published if published once not later than twenty days before the election. Such notice shall state the maximum amount of the proposed bonds and the purpose thereof, and the fact that a tax will be levied for the payment thereof. The date of the election shall be stated therein.

(e) Ballots.—A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "for the ordinance authorizing $........ bonds (briefly stating the purpose), and a tax therefor," and "against the ordinance authorizing $.......... bonds (briefly stating the purpose), and a tax therefor," with squares in front of each proposition, in one of which squares the voter may make an (X) mark, but this form of ballot is not prescribed.

(f) Returns Canvassed.—The officers appointed to hold the election, in making return of the result thereof, shall incorporate therein not only the number of votes cast for and against each ordinance submitted, but also the number of voters registered and qualified to vote in the election. The governing body shall canvass the returns, and shall include in their canvass the votes cast and the number of voters registered and qualified to vote in the election, and shall judicially determine and declare the result of the election.

(g) Application of Other Laws.—Except as herein otherwise provided, the registration and election shall be conducted in accordance with the laws then governing elections for municipal officers in such municipality, and governing the registration of the electors for such election of officers.

(h) Statement of Result.—The board shall prepare a statement showing the number of votes cast for and against each ordinance submitted, and the number of voters qualified to vote in the election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board and delivered to the clerk of the municipality, who shall record it in the book of ordinances of the municipality and file the original in his office and publish it once.

(i) Limitation as to Actions.—No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement: Provided, that §§ 160-386 and 160-387 shall not apply to the incorporated towns of Madison County. (1917, c. 138, s. 22; 1919, c. 178, s. 3 (22); 1919, c. 291; C. S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1949, c. 497, s. 4; 1953, c. 1065, s. 2.)

Cross Reference.—As to power of municipality to issue bonds for the purchase of voting machines, see note under § 160-51.1.

Editor's Note.—The second 1921 amendment substituted "one month" for "two months" in the second sentence of subsection (b), added all of subsection (c) except the first sentence, inserted subsection (g), and changed the time in subsection (i) from twenty to thirty days. The 1949 amendment rewrote subsection (a). For brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

The 1953 amendment added the last sentence of subsection (b).

When Election Held.—The requirement of subsection (b), that a special bond election shall not be held within one month before or after a regular municipal election, is mandatory and refers to a month according to the designation in the calendar without regard to the number of days it may contain, § 12-3, subdivision 3, and is computed by excluding the first and including the last day thereof as provided in § 1-593. Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24 (1927).

And the term "regular election" is interpreted with the antecedent words of the statute "municipal election," and excludes a general State or national election. Adcock v. Fuquay Springs, 194 N. C. 423, 140 S. E. 24 (1927).

Necessity of Notice.—In Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915), it is said: "While, so far as the officers are concerned who are charged with the duty of giving notice, the requirement as to notice is imperative, yet it will be regarded, otherwise, as directory, if the result would not be changed by a departure from the provisions of the statute. The law looks more to the substance than to the form, and if it appears that a clear majority of the qualified voters have cast their votes in favor of the proposition submitted to them, and that there has been a fair and full opportunity for all to vote, and that there has been no fraud, and the election is in all respects free from taint of any sort, so that no well founded suspicion can be cast upon it, it would be idle to say that this free and untrammeled expression of the popular will should be disregarded and set aside." Board of Com'rs v. Malone & Co., 179 N. C. 604, 103 S. E. 134 (1920).

This section intends that the result of an election as determined by the proper election officials shall stand until it shall be regularly contested and reversed by a tribunal having jurisdiction for that purpose. The court will not permit itself to be substituted for the proper election officials in the first instance for the purpose of canvassing the returns from the officers holding the election and declaring the result thereof. Garner v. Newport, 246 N. C. 449, 98 S. E. (2d) 505 (1957).

Necessary Allegations in Suit to Restrain Issuance of Bonds for Irregularities in Election.—In an action to restrain the issuance of bonds on the ground of irregularities in the bond election, a complaint which fails to allege that the officers appointed to hold the election had reported the results thereof to the governing body of the municipality and that the governing body had canvassed the returns and judicially determined the result, is demurrable. Garner v. Newport, 246 N. C. 449, 98 S. E. (2d) 505 (1957).

Form of Ballot Directory.—There being nothing in the statute making the exact language essential to the validity of a ballot, and the words used carrying practically the same meaning the requirement is directory and not mandatory, and a substantial compliance, is all that is necessary. Board of Com'rs v. Malone & Co., 179 N. C. 604, 103 S. E. 134 (1920).

Publication of Returns.—It is not necessary to the validity of an election that the returns be published as required by this section if it appears that no prejudice was sustained because of such failure. Board of Com'rs v. Malone & Co., 179 N. C. 604, 103 S. E. 134 (1920).

Applied in Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

§ **160-388. Preparation for issuing bonds.**—At any time after the passage of a bond ordinance, all steps preliminary to the actual issuance of bonds under the ordinance may be taken, but the bonds shall not be actually issued unless and until the ordinance takes effect. (1917, c. 138, s. 23; 1919, c. 178, s. 3 (23); C. S., s. 2949; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ **160-389. Within what time bonds issued.**—After a bond ordinance takes effect, bonds may be issued in conformity with its provisions at any time within five years after the ordinance takes effect, unless the ordinance shall have been repealed, which repeal is permitted (without the privilege of referendum upon the question of appeal), unless notes shall have been issued in anticipation of the receipts of the proceeds of the bonds and shall be outstanding: Provided, that the provisions of this paragraph shall apply to all bonds authorized by any bond ordinance taking effect on or after July 1st, 1952.

Notwithstanding the foregoing limitations of time which might otherwise prevent the issuance of bonds, bonds authorized by an ordinance which took effect prior to July 1st, 1952, and which have not been issued by July 1st, 1955, may be issued in accordance with all other provisions of law at any time prior to July 1st, 1957, unless such ordinance shall have been repealed, and any loans made under authority of § 160-375 of article 27 of this subchapter in anticipation of the receipt of the proceeds of the sale of such bonds, or any renewals thereof, may be paid on or at any time prior to but not later than June 30th, 1957, notwithstanding the limitation of time for payment of such loans as contained in said section. (1917, c. 138, s. 24; 1919, c. 178, s. 3 (24); C. S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1939, c. 231, s. 1; 1947, c. 510, s. 2; 1949, c. 190, s. 2; 1951, c. 439, s. 2; 1953, c. 693, s. 3; 1955, c. 704, s. 2.)

Local Modification.—Buncombe, and municipalities therein: 1943, c. 56.

Editor's Note.—The second 1921 amendment inserted the qualification following the second comma in the first paragraph, and the 1939 amendment added the proviso. The 1947 amendment added the second paragraph, and the 1949 and 1951 amendments changed the dates therein. For a brief comment on the 1947 amendment, see 25 N. C. Law Rev. 453.

The 1953 amendment inserted "five years" in lieu of "three years" near the beginning of this section, rewrote the proviso to the first paragraph and made changes in the dates appearing in the second paragraph.

The 1955 amendment changed the last three dates in the second paragraph.

§ **160-390. Amount and nature of bonds determined.**—The aggregate amount of bonds to be issued under a bond ordinance, the rate or rates of interest they shall bear, not exceeding six per centum per annum, payable semiannually or otherwise, and the times and place or places of payment of the principal and interest of the bonds, shall be fixed by resolution or resolutions of the governing body. Such bonds may be made subject to redemption prior to their respective maturities with or without premium as the governing body may provide in such resolution or resolutions, with the approval of the Local Government Commission. The bonds authorized by a bond ordinance, or by two or more bond ordinances if the bonds so authorized shall be consolidated into a single issue, may be issued either all at one time as a single issue or from time to time in series, and different provisions may be made for different series. (1917, c. 138, s. 25; 1919, c. 178, s. 3 (25); C. S., s. 2951; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1; 1951, c. 440, s. 1; 1953, c. 1206, s. 3.)

Cross Reference.—As to power to fix the face amount, the rate of interest, time of maturity and place of payment of temporary loans and notes, see § 159-43.

Editor's Note.—This section was reenacted without change by the second 1921 amendment and the 1933 amendment inserted in the first sentence "or otherwise."

The 1951 amendatory act, effective March 28, 1951, which rewrote the second sentence, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

The 1953 amendment inserted the second sentence. By section 4 of the amendatory act any resolution adopted pursuant to § 160-390 and prior to April 30, 1953, may be amended so as to provide that any unissued balance of bonds authorized by a bond ordinance, or by two or more bond ordinances, may be made redeemable prior to their respective maturities as provided in the 1953 amendment to the section.

§ **160-391. Bonded debt payable in installments.**—The bonds of each issue or of each series shall mature in annual installments, the first of which installments shall be made payable not more than three years after the date of the bonds of such issue or of such series, and the last within the period determined and declared pursuant to § 160-382 of this subchapter. If the bonds so authorized shall be issued at one time as a single issue, no such installment shall be more than two and one-half times as great in amount as the smallest prior installment of such issue. If the bonds so authorized shall be issued in series, the total amount outstanding after the issuance of any particular series shall mature so that the total amount of such bonds maturing in any fiscal year shall not be more than two and one-half times as great in amount as the smallest amount of such outstanding bonds which mature in any prior fiscal year, and the first installment of the bonds of any series subsequent to the first series may mature more than three years after the date of the bonds of the first series. This section shall not apply to funding or refunding bonds or bonds authorized to pay revenue bonds. (1917, c. 138, s. 26; 1919, c. 178, s. 3 (26); C. S., s. 2952; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1931, c. 60, s. 52; 1933, c. 259, s. 1; 1951, c. 440, s. 2; 1957, c. 856, s. 3.)

Editor's Note.—This section was reenacted without change in meaning by the second 1921 amendment.

The 1933 amendment added the last sentence stating that the section shall not apply to funding or refunding bonds. Prior to the amendment the section was applicable to such bonds in municipalities having a debt of less than twelve per cent of the assessed valuation.

The 1951 amendment rewrote this section. The amendatory act, effective March 28, 1951, provides that its provisions shall apply to the bonds of any county or municipality heretofore authorized, notwithstanding the fact that a part of such authorized bonds may have heretofore been issued.

The 1957 amendment added "or bonds authorized to pay revenue bonds" at the end of the section.

§ **160-392. Medium and place of payment.**—The bonds may be made payable in such kinds of money and at such place or places within or without the State of North Carolina as the governing body may by resolution provide. (1917, c. 138, s. 27; 1919, c. 178, s. 3 (27); C. S., s. 2953; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ **160-393. Formal execution of bonds.**—The bonds shall be issued in such form as the officers who execute them shall adopt, except as otherwise provided by the governing body. They shall be signed by two or more officers designated by the governing body, or, if the governing body makes no such designation, then by the mayor or other chief executive officer and by the clerk, and the corporate seal of the municipality shall be affixed to the bonds. The bonds may have coupons attached for the interest to be paid thereon, which coupons shall bear a facsimile signature of the clerk in office, at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid notwithstanding any change in the officers or in the seal of the municipality occurring after the signing and sealing of the bonds. (1917, c. 138, s. 28; 1919, c. 178, s. 3 (28); C. S., s. 2954; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross Reference.—As to requirement that bond be on a single sheet of paper, see § 159-17.

Editor's Note.—The second 1921 amendment provided that in case no one was designated the mayor and clerk should sign the bonds. Formerly it was provided that the mayor and financial officer sign, and the clerk affix the seal of the municipality and attest it.

§ **160-394. Registration and transfer of bonds.**—(a) Bonds Payable to Bearer.—Bonds issued under this subchapter shall be payable to the bearer unless they are registered as provided in this section; and each coupon appertaining to a bond shall be payable to the bearer of the coupon.

(b) Registration and Effect.—A municipality may keep in the office of its financial officer or in the office of a bank or trust company appointed by the governing body as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue, or, at the request of the holder, thereafter. After such registration the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registry by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner.

(c) Registration and Transfer Noted on Bond.—Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. Upon the registration of a coupon bond as to both principal and interest he shall also cut off and cancel the coupons.

(d) Agreement for Registration.—A municipality may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. (1917, c. 138, s. 29; 1919, c. 178, s. 3 (29); C. S., s. 2955; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment, in subsection (b), the appointment of registrar or transfer agent is designated as appointed by the "governing body," where formerly it was by the "governing board." The amendment deleted from subsection (d) a former provision for agreeing by a recital in the bonds to register them as to both principal and interest.

See 13 N. C. Law Rev. 76.

§ **160-395. Application of funds.**—The proceeds of the sale of bonds under this subchapter shall be used only for the purposes specified in the ordinance authorizing said bonds, and for the payment of the principal and interest of temporary loans made in anticipation of the sale of bonds: Provided, however, that if for any reason any part of such proceeds are not applied to or are not necessary for such purposes, such unexpended part of the proceeds shall be applied to the payment of the principal or interest of said bonds. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1917, c. 138, s. 31; 1919, c. 178, s. 3 (31); C. S., s. 2957; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross References.—As to penalty for misappropriating funds, see § 159-36. As to authority to invest proceeds of bonds which cannot be used for purpose of issue, see § 159-49.1.

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ **160-396. Bonds incontestable after delivery.**—Any bonds reciting that they are issued pursuant to this subchapter shall in any action or proceeding involving their validity be conclusively deemed to be fully authorized by this subchapter and to have been issued, sold, executed, and delivered in conformity herewith, and with all other provisions of statutes applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun prior to the delivery of such bonds. (1917, c. 138, s. 32; 1919, c. 178, s. 3 (32); C. S., s. 2958; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Cross Reference.—As to method of testing the validity of bonds, see § 159-52.

Editor's Note.—This section was reenacted without change by the second 1921 amendment.

§ 160-397. Taxes levied for payment of bonds.—The full faith and credit of the municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on every bond and note issued under this subchapter, including assessment bonds or other bonds for which special funds are provided. The governing body shall annually levy and collect a tax ad valorem upon all the taxable property in the municipality sufficient to pay the principal and interest of all bonds issued under this subchapter as such principal and interest become due: Provided, however, that such tax may be reduced by the amount of other moneys appropriated and actually available for such purpose.

So much of the net revenue derived by the municipality in any fiscal year from the operation of any revenue producing enterprise owned by the municipality after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the interest, payable in the next succeeding year on bonds issued for such enterprise, and next, to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds. All money derived from the collection of special assessments for local improvements for which bonds or notes were issued shall be placed in a special fund and used only for the payment of bonds or notes issued for the same or other local improvements.

Every municipality shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of or the interest on any bonds or notes for the payment of which the municipality is liable, issued under any act other than this subchapter, or for the purpose of providing a sinking fund for the payment of said principal, or for the purpose of paying the principal of or interest on any notes issued under this subchapter.

The powers stated in this section in respect of the levy of taxes for the payment of the principal and interest of bonds and notes shall not be subject to any limitation prescribed by law upon the amount or rate of taxes which a municipality may levy. Taxes levied under this section shall be levied and collected in the same manner as other taxes are levied and collected upon property in the municipality: Provided, in the case of funding or refunding bonds which do not mature in installments, as provided in § 160-391 of this subchapter, a tax for the payment of the principal of said bonds need not be levied prior to the fiscal year or years said bonds mature unless it is so provided for in an ordinance or resolution passed before the issuance of said bonds, in which case such tax shall be levied in accordance with the provisions of such ordinance or resolution. (1917, c. 138, s. 33; 1919, c. 178, s. 3 (33); C. S., s. 2959; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1933, c. 259, s. 1.)

Cross References.—See § 159-34. As to municipality applying sinking fund to purchase of its own bonds, see § 153-148 et seq.

Editor's Note.—By the second 1921 amendment the provision in the last sentence of the second paragraph for local improvement and collection of assessments therefor replaced a former provision for "special assessments upon which assessment bonds or other bonds or notes are predicated."

The 1933 amendment inserted the proviso in the last paragraph.

Net Revenue Derived from Revenue-Producing Enterprise Should Be Applied to Bonds.—It is clear from a reading of this section that the legislature intended that, where bonds were issued to enable a municipality to carry on a revenue-producing enterprise, the net revenue derived from such enterprise should be applied to the payment of the interest and principal of such bonds. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

After Paying Operation and Maintenance Expenses.—Where a waterworks system produces revenue, it is a revenue-producing enterprise; and, if net revenues are derived from it, after paying all expenses of operating, managing, maintaining, repairing, enlarging, and extending such system, this section requires that they be applied to the payment of the principal and interest due on the bonds issued "for such enterprise." George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

The requirement that net revenues after paying the expenses of operation shall be applied on bonds does not mean that the discretionary control of waterworks vested in the city authorities by § 160-256 is in anywise limited. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Without Regard as to Time Bonds Are Issued.—There is nothing in this section which limits the application of the net revenue of a revenue-producing enterprise to bonds thereafter issued and there is no reason why the section should be so interpreted. The language of the section provides in the broadest possible terms that the net revenue from such an enterprise shall be applied on the principal and interest of bonds "issued for such enterprise," without limitation as to when such bonds may have been issued. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Where Bonds Share Alike.—As this section clearly intended that such net revenues should be applied on the principal and interest of all bonds which were issued for the system, where the sewer system is an integral and essential part of the waterworks system and with it constitutes one revenue-producing enterprise, sewer bonds should share along with waterworks bonds in the net revenues of the waterworks system. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

A revenue-producing enterprise is manifestly one which produces revenue, not necessarily one which produces profit or net revenue. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Injunction to Restrain Diversion of Gross Revenues.—As net revenues can be effectively diverted in advance of their ascertainment by diversion of gross revenues, injunction should be granted to restrain the diversion of gross revenues, if it appears that net revenues are in danger of being diverted in this way. However, care should be taken so as not to trench upon the discretion of the municipal authorities in the management of the water and sewer system. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

If net revenue remains after payment of operating expenses such funds are thereafter held in trust to be applied as the statute directs, and any threatened diversion or misapplication should be enjoined. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Bonds Not a Charge upon the Taxing Power of City.—As bonds in aid of the ordinary revenue-producing enterprises of a city, i. e., enterprises for furnishing water, gas, electric light, or power, were exempted from the debt limitation of § 160-383, this shows that it was thought that, while the credit of the municipality would be pledged for bonds of this character, they would not be a charge upon the taxing power of the city but would be taken care of by the revenues of the enterprises for which they were issued. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

§ 160-398. Destruction of paid bonds and interest coupons.—All paid bonds and interest coupons of a municipality may, in the discretion of the governing body, be destroyed in accordance with one of the following methods:

Method 1. Before any such bonds and coupons are destroyed as hereinafter provided the treasurer of the municipality shall make a descriptive list of the same in a substantially bound book kept by him for the purpose of recording destruction of paid bonds and coupons. Said list shall include, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, the designation or purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount of coupons. After such list has been made the paid bonds and coupons so described shall be destroyed, either by burning or by shredding, in the presence of the mayor, the treasurer of the municipality and the municipal attorney, each of whom shall certify under his hand in such book that he saw such bonds and coupons so destroyed. No paid bonds or coupons shall be so destroyed within one year from their respective maturity dates.

Method 2. The governing body may contract with any bank or trust company for the destruction, as hereinafter provided, of bonds and interest coupons which are paid and canceled. The contract shall substantially provide, among such other stipulations and provisions as may be agreed upon, that such bank or trust company shall furnish the municipality, periodically or from time to time, with a written certificate of destruction containing a description of bonds and coupons destroyed, including, with respect to bonds, (i) designation or purpose of issue, (ii) date of issue, (iii) bond numbers, (iv) denomination, (v) maturity date and (vi) total principal amount and, with respect to coupons, designation or purpose of issue and date of bonds to which such coupons appertain, the maturity date of such coupons and, as to each such maturity date, the denomination, quantity and total amount, and certifying that such paid and canceled bonds and coupons have been destroyed either by burning or by shredding. No paid and canceled bonds or coupons shall be destroyed within one (1) year after their respective maturities or, in the case of bonds paid prior to their maturities, within one (1) year from such payment. Each such certificate shall be filed by the treasurer of the municipality among the permanent records of his office.

The provisions of G. S. 121-5 and 132-3 shall not apply to the paid bonds and coupons referred to in this section. (1941, c. 203; 1961, c. 663, s. 2; 1963, c. 1172, s. 2.)

Editor's Note.—The 1961 amendment rewrote this section.

The 1963 amendment rewrote the paragraph headed "Method 2," which formerly required the contract to be with a bank or trust company acting as the paying agent of the municipality.

Article 29.

Restrictions upon the Exercise of Municipal Powers.

§ 160-399. In borrowing or expending moneys.—(a) No municipality shall:

(1) Make an appropriation of money except as provided in this subchapter;

(2) Borrow money or issue bonds or notes except as provided in this subchapter;

(3) Make an expenditure of money unless the money shall have been appropriated as provided in this subchapter, or unless the expenditure is a payment of a judgment against the municipality or is a payment of the principal or interest of a bond or note of the municipality; or,

(4) Enter into any contract involving the expenditure of money unless a sufficient appropriation shall have been made therefor, except a continuing contract to be performed in whole or in part in an ensuing fiscal year, in which case an appropriation shall be made sufficient to meet the amount to be paid in the fiscal year in which the contract is made.

(b) The authorization of bonds by a municipality shall be deemed to be an appropriation of the maximum authorized amount of the bonds for the purposes for which they are to be issued. (1917, c. 138, s. 34; 1919, c. 178, s. 3 (34); C. S., s. 2960; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—This section was re-enacted without change by the second 1921 amendment.

A city purchasing a cemetery in excess of the acreage formerly allowed by § 160-2, subdivision (3), although the act was ultra vires and no provision was made in the city's budget for payment, took a good title, and only the State in direct proceedings could question it. Harrison v. New Bern, 193 N. C. 555, 137 S. E. 582 (1927).

Continuing Contract.—The definition of a "continuing contract" as used in subsection (a), (4) of this section depends largely upon the facts of particular cases. The governing principle in such contracts is successive transactions between the parties over a definite or indefinite period of time. White Co. v. Hickory, 195 N. C. 42, 141 S. E. 494 (1928).

A contract with an engineer to furnish services in connection with the construction of a city's water supply, the completion of which will extend beyond the period of one year, is a continuing one under this section. White Co. v. Hickory, 195 N. C. 42, 141 S. E. 494 (1928).

Cited in Henderson v. New Bern, 241 N. C. 52, 84 S. E. (2d) 283 (1954); Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

§ 160-400. Manner of passing ordinances and resolutions.—Ordinances and resolutions passed pursuant to this subchapter shall be passed in the manner provided by other laws for the passage of ordinances and resolutions, but shall not be subject to the provisions of other laws prescribing conditions, acts, or things necessary to exist, happen, or be performed precedent to or after the passage of ordinances or resolutions in order to give them full force and effect: Provided, however, that in any municipality in which the acts of the governing body thereof involving the raising or expenditure of money are required by law to be approved by some other official board or officer of the municipality in order to make them effective, all ordinances and resolutions passed by the governing body under this subchapter shall, unless they relate solely to elections held under this subchapter, be so approved before they take effect. (1917, c. 138, s. 35; 1919, c. 178, s. 3 (35); C. S., s. 2961; 1921, c. 8, s. 4; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment a part of the proviso reading "expenditure of money as required by law" was changed to read "expenditure of money are required by law."

§ 160-401. Enforcement of subchapter.—If any board or officer of a municipality shall be ordered by a court of competent jurisdiction to levy or collect a tax to pay a judgment or other debt, or to perform any duty required by this subchapter to be performed by such board or officer, and shall fail to carry out such order, the court, in addition to all other remedies, may appoint its own officers or other persons to carry out such order. (1917, c. 138, s. 36; 1919, c. 178, s. 3 (36); C. S., s. 2962; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1.)

Editor's Note.—By the second 1921 amendment there was deleted from this section a provision for officers, creditors and taxpayers to maintain an action to declare invalid any illegal official act, and a provision for jurisdiction of the superior court to enforce by mandamus or injunction the provision of the act.

§ 160-402. Limitation of tax for general purposes.—For the purpose of raising revenue for defraying the expenses incident to the proper government of the municipality, the governing body shall have the power and it is hereby authorized to levy and collect an annual ad valorem tax on all taxable property in the municipality at a rate not exceeding one dollar and fifty cents ($1.50) on the one hundred dollar ($100.00) valuation of said property, notwithstanding any other law, general or special, heretofore or hereafter enacted, except a law hereafter enacted expressly repealing or amending this section.

Notwithstanding the limitation upon taxation contained in this section, the governing body of any municipality is hereby authorized in its discretion to levy annually on all taxable property within the municipality a special tax for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the jurisdiction of the municipality. The special approval of the General Assembly is hereby given to the issuance by municipalities of bonds and notes for the special purpose of meeting the expense of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling any extraordinary breach of law and order which occurs or which threatens to occur within the jurisdiction of the municipality. (1917, c. 138, s. 37; 1919, c. 178, s. 3 (37); C. S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3.)

Local Modification.—City of Hendersonville: 1959, c. 868; city of Winston-Salem: 1957, c. 1110; town of Bakersville: 1963, c. 817; town of Nashville: 1945, c. 122; town of Raeford: 1949, c. 134; town of Snow Hill: 1963, c. 508; town of Spruce Pine: 1963, c. 319; town of Warrenton: 1951, c. 108.

Editor's Note.—The second 1921 amendment changed the maximum rate from $1.25 to $1.00 on the one hundred dollar valuation of property, and added that part of the section beginning with "notwithstanding". The 1947 amendment increased the rate from $1.00 to $1.50, and deleted the former proviso relating to certain cities.

Session Laws 1953, c. 44, made this section applicable to the town of Bakersville in Mitchell County.

The 1959 amendment added the second paragraph.

Cited in Burnsville v. Boone, 231 N. C. 577, 58 S. E. (2d) 351 (1950).

Article 30.

General Effect of Municipal Finance Act.

§ **160-403. Effect upon prior laws and proceedings taken.**—All acts and parts of acts, whether general, special, private or local, regulating or relating in any way to the issuance of bonds or other obligations of a municipality, or relating to the subject matter of this subchapter, are hereby repealed: Provided, however, that this subchapter shall not affect any local or private act enacted at the extraordinary session, 1921, of the General Assembly, or regular session of one thousand nine hundred and twenty-one, but the powers hereby conferred and the methods of procedure hereby provided shall be deemed to be conferred and provided in addition to and not in substitution for those conferred or provided by any such local or private act enacted at the extraordinary session, 1921, of the General Assembly, or regular session of one thousand nine hundred and twenty-one, so that any municipality may, at its option, proceed under any such local or private act applicable to it enacted at the extraordinary session, 1921, of the General Assembly or regular session of one thousand nine hundred and twenty-one without regard to the restrictions imposed by this subchapter, or may proceed under this subchapter without regard to the restrictions imposed by any other act: Provided further, that this subchapter shall not affect any of the provisions of article nine of subchapter one of chapter 160, except those provisions which prescribe methods of procedure for borrowing money or issuing bonds or other obligations, and said article shall apply to all municipalities in this State, notwithstanding any inconsistent, general, special, local or private laws: Provided further, that this subchapter shall not affect any acts or proceedings heretofore done or taken for the issuance of bonds or other obligations under the Municipal Finance Act, as it stood prior to December 20, 1921, or under any other law, and every municipality is hereby authorized to complete said acts and proceedings pursuant to the laws under which they were done or taken, and to issue said bonds or other obligations under such acts in the same manner as if this subchapter had not been passed: Provided further, that this subchapter shall not render invalid any bonds or notes or proceedings for the issuance of bonds or notes in cases when such bonds, notes or proceedings have been validated by any other act. (Ex. Sess. 1921, c. 106, s. 2; C. S., s. 2969(a).)

Article 31.

Municipal Fiscal Agency Act.

§ **160-404. Title of article.**—This article shall be known as "The Municipal Fiscal Agency Act." (1925, c. 195, s. 1.)

§ **160-405. Payment of fees to bank.**—Whenever any county, city, town, township, school district or school taxing district is or shall be authorized or permitted to make payments of bonds or coupons issued by it or in its behalf at any place other than within such county, city, town, township, school district or school taxing district, and such bonds or coupons are by their terms payable at such other place, it shall be lawful for the officer disbursing the funds for such payment to pay the reasonable fees of the bank, trust company or other agency making payment at such place, and to agree to pay such fees at a fixed rate throughout the term of the bonds as to which such payment is to be made at such place, but no fee in excess of one-fourth of one per cent of the amount of interest paid and one-eighth of one per cent of the amount of principal paid shall be deemed reasonable. (1925, c. 195, s. 2.)

Local Modification.—Buncombe: 1937, c. 320.

ARTICLE 32.

Municipal Bond Registration Act.

§ **160-406. Title of article.**—This article shall be known as "The Municipal Bond Registration Act". (1925, c. 129, s. 1.)

§ **160-407. Registration.**—Each county, city, town, school district and school taxing district which has issued or shall hereafter issue bonds in its own name, and each county, city and town, which has issued or shall hereafter issue bonds in behalf of a school district or a school taxing district, is hereby authorized to keep in the office of its treasurer or financial agent or its clerk, or in the office of the bank or trust company appointed by its governing body as bond registrar, a register or registers for the registration as to principal of such bonds in the name of the owner thereof, in which it may register any such bond as to principal at the time of its issue, or at the request of the holder thereafter. Such registration shall not affect the payment of interest, but such interest shall continue to be made upon the presentation and surrender of interest coupons if issued, but after such registration as to principal, the principal shall be payable to the person in whose name registered or to the person in whose name the bonds registered may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner: Provided, however, that a registered bond may be discharged from registry by a transfer to bearer registered as herein provided. Upon the registration or transfer of a bond as aforesaid the bond registrar shall note such registration or transfer on the back of the bond. (1925, c. 129, s. 2.)

§ **160-408. Powers in addition to existing powers.**—The powers herein granted are not in substitution of existing powers but in addition thereto. (1925, c. 129, s. 3.)

SUBCHAPTER IV. FISCAL CONTROL.

ARTICLE 33.

Fiscal Control.

§ **160-409. Title; definitions.**—This article shall be known and may be cited as "The Municipal Fiscal Control Act."

In this article, unless the context otherwise requires, certain words and expressions have the following meaning:

(1) "Accountant" means the officer designated or appointed under the provisions of § 160-409.1.
(2) The "budget year" is the fiscal year for which a budget is being prepared.
(3) "Debt service" means the payment of principal and interest on bonds and notes as such principal or interest falls due, and the payments of moneys required to be paid into sinking funds.
(4) The "fiscal year" is the annual period for the compilation of fiscal operations, and begins on the first day of July and ends on the 30th day of June.
(5) "Fund" means a sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives and

constituting an independent fiscal and accounting entity. Each municipality shall maintain the following funds:

a. General fund.
b. Debt service fund.
c. A fund for each special tax levied by the governing body.
d. A fund for each utility; provided, that where a water system and a sanitary sewerage system are operated as a combined and consolidated system in the manner provided by law, one fund may be established to account for the revenues and expenditures of both.
e. A bond fund to account for the application of the proceeds of the sale of bonds to the specific purpose for which such bonds were duly authorized.
f. A fund for each subdivision to account for the collections of each special tax levied for a particular function or purpose of such subdivision.
g. Such other funds as may be established by the governing body, separately stated.

(6) "Governing body" means the board or body in which the general legislative powers of a municipality are vested.

(7) "Municipality" means any city, town, or incorporated village in this State, now or hereafter incorporated.

(8) "Subdivision" means a school district, school taxing district, or other political corporation or subdivision wholly or partly within a municipality, the taxes for which are under the law levied by the governing body of the municipality.

(9) The "surplus" of a fund at the close of a fiscal year means the amount by which the cash balance exceeds the total of current liabilities, the encumbrances, and the taxes or other revenue collected in advance. Encumbrances are obligations in the form of purchase orders, contracts or salary commitments which are chargeable to an appropriation made in the year just closing and which are unpaid at the close of such year. Taxes or other revenue collected in advance are sums received in the year just closing but which are not due until after the beginning of the new fiscal year. (1955, c. 698.)

Cross Reference.—As to County Fiscal Control Act, see § 153-114 et seq.

Editor's Note.—The 1955 amendment revised and rewrote this article which formerly consisted of four sections.

Early Decisions.—For cases citing or applying sections in this article prior to the 1955 amendment, see Standard Inv. Co. v. Snow Hill, 78 F. (2d) 33 (1935); Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938); Bryson City Bank v. Bryson City, 213 N. C. 165, 195 S. E. 398 (1938).

§ **160-409.1. Municipal accountant.**—In all cases where a city or town charter provides for the office of accountant or director of finance, the incumbent in such office shall be the municipal accountant of such city or town for the purposes of this article. Where the city or town charter does not create such an office, the municipal accountant shall be designated or appointed as follows:

(1) In cities and towns governed under the manager form of government, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the manager or on some person designated or appointed by the manager to serve at the will of the manager;

(2) In cities and towns having a full-time mayor, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the full-time mayor or on some person appointed or designated by the mayor to serve at the will of the mayor;

(3) In cities and towns having neither a manager nor a full-time mayor, the powers and duties herein imposed and conferred on the municipal accountant shall be imposed and conferred on the clerk of the municipality

or on some person appointed or designated by the governing body to serve at the will of the governing body.

Provided, that the experience, training, and qualifications of any person on whom the powers and duties of the municipal accountant are imposed and conferred by or under this section shall be approved by the Local Government Commission, which approval shall continue until revoked by such Commission. If any person upon whom the powers and duties of the municipal accountant are imposed and conferred is a tax collecting officer of the municipality, it shall be the duty of the governing body to require all his books and accounts to be audited at least annually by a certified public accountant or by a public accountant registered under chapter 93 of the General Statutes. (1955, c. 698.)

§ **160-409.2. Bond of accountants.**—Every person designated or appointed as municipal accountant may be required to furnish bond in some surety company authorized to do business in North Carolina, the amount of such bond to be fixed by the governing body, approved by the governing body and by the Local Government Commission, and conditioned for the faithful performance of his duties imposed by law. (1955, c. 698.)

§ **160-409.3. Additional duties of municipal accountants.**—In addition to the duties imposed and powers conferred upon the municipal accountant by this article he shall have the following duties and powers:

(1) He shall act as accountant for the municipality and subdivisions in settling with all municipal officers.

(2) He shall keep or cause to be kept a record of the date, source, and amount of each item of receipt, and the date, the payee or contractor, the specific purpose, and the amount of every disbursement or contract made; and he shall keep or cause to be kept a copy of every contract made requiring the payment of money.

(3) He shall examine once a month, or at such other times as the governing body may direct, all books, accounts, receipts, vouchers, and other records of all officers and employees receiving or expending money of the municipality or any subdivision thereof: Provided, that the governing body may relieve the municipal accountant of the duty of examining the records of any such officer or employee whose records are audited at least annually by a certified public accountant or by a public accountant registered under chapter 93 of the General Statutes.

(4) He shall, as often as he may be directed by the governing body, file with the governing body a complete statement of the financial condition of the municipality and subdivisions, showing the receipts and expenditures of the different offices, departments, institutions, and agencies.

(5) He shall advise with the heads of offices, departments, institutions, and agencies of the municipality and its subdivisions and with State officers as to the best and most convenient method of keeping accounts, and shall inform himself as to the best and simplest methods of keeping accounts, so as to bring about as far as possible a simple, accurate, and uniform system of keeping accounts of the municipality and subdivisions.

(6) He shall not allow any bill or claim unless the same be so itemized as to show the nature of the services rendered.

(7) He shall perform such other duties having relation to the purposes of this article as may be imposed upon him by the governing body. (1955, c. 698.)

§ **160-410. Heads of offices, departments, institutions, and agencies to file budget statements before June 1.**—It shall be the duty of all heads of offices, departments, institutions, and agencies of the municipality and its subdivisions to file with the municipal accountant on or before such date prior to the first day of June each year as the municipal accountant may direct

(1) A complete statement of the amounts expended for each object of expenditure in his office, department, institution, or agency, in the fiscal year preceding the then current fiscal year, and

(2) A complete statement of the amount expended and estimated to be expended for each object in his office, department, institution, or agency in the current fiscal year and

(3) An estimate of the requirements of his office, department, institution, or agency for each object in the budget year.

Such statements and estimates shall list each object of expenditure in such form and in such detail as may be prescribed by the municipal accountant, and shall include such other supporting information as may be prescribed by the municipal accountant. (1955, c. 698.)

§ **160-410.1. Budget estimate.**—Upon receipt of such statements and estimates, the municipal accountant in municipalities not having the manager form of government or the manager in municipalities having the manager form of government, shall prepare

(1) His estimate of the amounts necessary to be appropriated for the budget year for the various offices, departments, institutions, and agencies of the municipality and its subdivisions, listing the same under the appropriate funds maintained as required by § 160-409, which estimate shall include the full amount of all debt service which the municipal accountant or manager through the exercise of due diligence determines will be due and payable in the budget year and also shall include the full amount of any deficit in any fund, and it may include a contingency estimate for each fund to meet expenditures for which need develops subsequent to the passage of the appropriation ordinance, and

(2) An itemized estimate of the revenue to be available during the budget year, separating revenue from taxation from revenue from other sources and classifying the same under the appropriate funds maintained as required by § 160-409, and

(3) An estimate of the amount of surplus in each fund as of the beginning of the budget year which he recommends be appropriated to meet expenditures for the budget year.

These estimates shall be broken down into as much detail and have appended thereto such information as the governing body may direct and otherwise to take such form as the municipal accountant or manager may determine. The estimates of revenues when added to the surplus figure for each fund shall equal the estimates of appropriations for that fund. The municipal accountant or manager shall also include with such estimates a statement of the rate of tax which will have to be levied in each fund in order to raise the amount of revenue from taxation included in the estimates of revenue: Provided, that the municipal accountant or manager shall indicate clearly in such statement the percentage of taxes levied which he estimates will be collected in the budget year and on which he has based the rate of tax necessary to raise the amount of revenue from taxation included in the estimates of revenue. Such estimates and statements of the municipal accountant or manager shall be termed the "budget estimate," and shall be submitted to the governing body not later than the 7th day of July of each year: Provided, that the budget estimate may be submitted to the governing body on such earlier date as the municipal accountant or manager, with the approval of the governing body may determine. The municipal accountant or manager may submit a budget message with the budget estimate which may contain an outline of the proposed financial policies of the municipality for the budget year, may describe in connection therewith the important features of the budget plan, may set forth the reasons for stated changes from the previous year in appropriation and revenue items, and may explain any major changes in financial policy. (1955, c. 698.)

§ 160-410.2. Time for filing budget estimate.—Immediately upon the submission of the budget estimate, and at least twenty days before the adoption of the budget ordinance, the governing body shall:

(1) File the budget estimate in the office of the clerk of the municipality where it shall remain for public inspection, and

(2) Make available a copy of the budget estimate for all newspapers published in the municipality, and

(3) Cause to be published in at least one newspaper published in the municipality a statement that the budget estimate has been presented to the governing body and that a copy of the same is on file for public inspection in the office of the clerk of the municipality, which statement may also include such other information as the municipal accountant may determine: Provided, however, that if no newspaper be published in the municipality, such statement shall be posted at the door of the city hall or town hall and at least three other public places in the municipality at least twenty days before the passage of the budget ordinance. (1955, c. 698.)

§ 160-410.3. Budget ordinance.—It shall be the duty of the governing body, at least twenty days subsequent to the publication of the statement required by § 160-410.2 but not later than the 28th day of July in each year, to adopt and record on its minutes a budget ordinance, the form of which shall be prescribed by the municipal accountant or manager. The budget ordinance shall, on the basis of the estimates and statements submitted by the municipal accountant or manager, make appropriations for the several offices, departments, institutions, and agencies of the municipality and its subdivisions, and the budget ordinance shall provide for the financing of the appropriations so made. The appropriations shall be made in such sums as the governing body may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate, and the appropriation or appropriations for each office, department, institution, or agency shall be made in such detail as the governing body deems advisable: Provided, however, that

(1) No appropriation recommended by the municipal accountant or manager for debt service shall be reduced, and

(2) The governing body shall appropriate the full amount of all lawful deficits reported in the budget estimate, and

(3) No contingency appropriation shall be included in any fund in excess of five per cent (5%) of the total of the other appropriations in the fund: Provided, that before any or all of such contingency appropriation be expended, the governing body must by ordinance authorize the expenditure, and

(4) No appropriations shall be made which will necessitate the levy of a tax in excess of any constitutional or statutory limits of taxation, and

(5) The total of all appropriations in each fund shall not be in excess of the estimated revenues and surplus available to that fund.

The revenue portion of the budget ordinance shall include the following:

(1) A statement of the revenue estimated to be received in the budget year in each fund maintained as required by § 160-409, separating revenues from taxes to be levied for the budget year from revenues from other sources and including such amount of the surplus of each fund on hand or estimated to be on hand at the beginning of the budget year as the governing body deems advisable to appropriate to meet expenditures of such fund for the budget year; and

(2) The levy of such rate of tax for each fund in the budget year as will be necessary to produce the sum appropriated less the estimates of revenue from sources other than taxation and less that part of the surplus of the fund which is proposed to be appropriated to meet expenditures in the budget year.

In determining the rate of tax necessary to produce such sums, the governing body shall decide what portion of the levy is likely to be collected and available to finance appropriations and shall make the levy accordingly; and further the governing body shall not estimate revenue from any source other than the property tax in an amount in excess of the amount received or estimated to be received in the year preceding the budget year unless it shall determine that the facts warrant the expectation that such excess amount will actually be realized in cash during the budget year. (1955, c. 698.)

§ **160-410.4. Copies of ordinance filed with municipal treasurer and municipal accountant.**—A copy of the budget ordinance shall be filed with the municipal treasurer or other officer or agent performing the functions ordinarily assigned to the municipal treasurer, and another copy thereof shall be filed with the municipal accountant, both copies so filed to be kept on file for their direction in the disbursement of municipal funds. (1955, c. 698.)

§ **160-410.5. Failure to raise revenue a misdemeanor.**—Any member of a governing body of any municipality who shall fail to vote to raise sufficient revenue for the operating expenses of the municipality as provided for in § 160-410.3, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, or both in the discretion of the court. (1955, c. 698.)

§ **160-410.6. Emergencies.**—In case an emergency arises necessitating the expenditure of funds and in case under the existing budget ordinance there are no funds available to meet such expenditure, the governing body may make application to the Local Government Commission and such Commission may permit the governing body to anticipate the taxes of the next fiscal year by not more than five per cent (5%) of the tax levy for the current year. In the event of the approval of such anticipation of the taxes of the next fiscal year by the Commission, the governing body of any such municipality is authorized to provide by resolution for the issuance of a note or notes in an amount not in excess of the amount authorized by such Commission, and such note or notes shall be payable not later than the 30th day of June of the next fiscal year and shall be paid by a special tax levied for such purpose. Any such note or notes shall be issued in accordance with the provisions of § 160-376. (1955, c. 698.)

§ **160-410.7. Publication of statement of financial condition.**—As soon as practicable after the close of each fiscal year, the municipal accountant shall prepare and cause to be published in a newspaper published in the municipality, or if no newspaper be published in the municipality then by posting at the door of the city hall or town hall and at least three other public places in the municipality, a statement of the financial condition of the municipality, containing such figures and information as the municipal accountant with the approval of the governing body may consider it advisable to publish, which statement as so published or posted shall include a statement of the assets and liabilities of several funds of the municipality as of the close of the preceding fiscal year together with a summary statement of the revenue receipts and expenditures of such funds in the preceding year, a statement of the bonded debt of the municipality as of the close of the preceding fiscal year, and a statement of assessed valuations, tax rates, tax levied and uncollected taxes for the preceding three fiscal years. (1955, c. 698.)

§ **160-410.8. Amendments to the budget ordinance.**—The governing body in the event the members thereof deem it necessary, may by ordinance amend the budget ordinance after its passage in any or all of the following ways:

(1) By transferring the unencumbered balance of any appropriation, or any portion of such balance, to any other appropriation within the same fund or to any new appropriation within the same fund;

(2) By making a supplemental appropriation in any fund in all or any portion of the amount of the unappropriated surplus of such fund or the amount by which total revenue receipts have exceeded total estimated revenues in such fund as of the date of the making of the supplemental appropriations;

(3) By transferring all or any portion of the unencumbered balance of any appropriation in the general fund to any existing appropriation or to any new appropriation in another fund or by making a supplemental appropriation in another fund financed by unappropriated surplus or excess revenue receipts of the general fund:

Provided, that no amendment to the budget ordinance shall be made if the effect of such amendment is to authorize an expenditure for a purpose which could not have been legally authorized in the original budget ordinance: Provided, further, that where the governing body shall determine that changed circumstances in the operation of a utility will result in the receipt in cash of revenues in excess of the estimates of revenues contained in the budget ordinance, that body may amend the estimates of revenues of the utility fund concerned as such estimates are set forth in the budget ordinance and may thereupon make a supplemental appropriation in such utility fund in the amount by which the amended estimates of revenues exceed the estimates of revenues in the budget ordinance, whether or not such excess has been actually received in cash as of the date of the making of such supplemental appropriation. Copies of any ordinance made pursuant to this section shall be made available to the municipal treasurer, municipal accountant, and the head of each office, department, institution, or agency affected thereby. (1955, c. 698.)

§ 160-410.9. Interim appropriations.—In case the adoption of the budget ordinance is delayed until after the beginning of the budget year, the governing body may make appropriations for the purpose of paying salaries, the principal and interest of indebtedness, and the usual ordinary expenses of the municipality and its subdivisions for the interval between the beginning of the budget year and the adoption of the annual budget ordinance. The interim appropriations so made shall be chargeable to the several appropriations, respectively, thereafter made in the annual budget ordinance for the year. (1955, c. 698.)

§ 160-411. Provisions for payment.—No contract or agreement requiring the payment of money, or requisitions for supplies or materials, shall be made, and no warrant or order for the payment of money shall be drawn upon the treasury of the municipality or a subdivision, unless provision for the payment thereof has been made by

(1) an appropriation as provided by this article or

(2) through the means of bonds or notes duly authorized by the General Assembly and by the governing body, and further authorized, in all cases required by law or the Constitution, by a vote of qualified voters or taxpayers or otherwise; nor shall such contract, agreement, or requisition be made unless the unencumbered balance of such appropriation or provision remains sufficient for such payment.

No contract or agreement or requisition requiring the payment of money shall be valid unless the same be in writing, and unless the same shall have printed, written, or typewritten thereon a statement signed by the municipal accountant as follows: "Provision for the payment of moneys to fall due under this agreement has been made by appropriation duly made or by bonds or notes duly authorized as required by the 'Municipal Fiscal Control Act.'" Such certificate shall not, however, make valid any agreement or contract made in violation of this section. Before making such certificate, the municipal accountant shall ascertain that a sufficient unencumbered balance of the specific appropriation remains for the payment of the obligation, or that bonds or notes have been so authorized the proceeds of which are applicable to such payment, and the appropriation or provision so made shall thereafter be deemed encumbered by the amount to be paid on such contract or agreement until the municipality is discharged therefrom. (1955, c. 698.)

§ **160-411.1. Warrants for payment.**—No bill or claim against the municipality or any subdivision shall be paid unless the same shall have been approved by the head of the office, department, institution, or agency for which the expense was incurred nor unless the same shall have been presented to and approved by the municipal accountant, or in the case of his disapproval of such bill or claim, by the governing body. The governing body shall not approve any bill or claim which has been disallowed by the municipal accountant without entering upon the minutes of the governing body its reason for approving the same in such detail as may show the governing body's reason for reversing the municipal accountant's disallowance. No bill or claim against the municipality or any subdivision shall be paid except by means of a warrant or order on the municipal treasurer or depository, and no warrant or order, except a warrant or order for the payment of maturing bonds, notes, or interest coupons thereto appertaining, and except a warrant or order for the payment of any bill or claim approved by the governing body over the disallowance of the municipal accountant as above provided, shall be valid unless the same shall bear the signature of the municipal accountant below a statement which he shall cause to be written, printed, or typewritten thereon containing the words: "Provision for the payment of this warrant (or order) has been made by an appropriation duly made or a bond or note duly authorized, as required by the 'Municipal Fiscal Control Act.'" (1955, c. 698.)

§ **160-411.2. Contracts or expenditures in violation of preceding section.**—If any municipal accountant shall make any certificate on any contract, agreement, requisition, warrant, or order as required by § 160-411 or § 160-411.1, when there is not a sufficient unencumbered balance remaining for the payment of the obligation, he shall be personally liable for all damages caused thereby. If any officer or employee shall make any contract, agreement, or requisition without having obtained the certificate of the municipal accountant as required by § 160-411, or if any officer or employee shall pay out or cause to be paid out any funds in violation of the provisions of § 160-411.1, he shall be personally liable for all damages caused thereby. (1955, c. 698.)

§ **160-411.3. Accounts to be kept by municipal accountant.**—Accounts shall be kept by the municipal accountant for each appropriation made in the budget ordinance or amendment thereto, which appropriations shall be classified under the various funds maintained as required in § 160-409, and every warrant or order upon the municipal treasury shall state specifically against which of such funds the warrant or order is drawn; information shall be kept for each such account so as to show in detail the amount appropriated thereto, the amount drawn thereupon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. (1955, c. 698.)

§ **160-411.4. Daily deposits by collecting or receiving officers.**—Every public officer and employee whose duty it is to collect or receive any funds or money belonging to any municipality or subdivision thereof shall deposit the same daily or if the governing body grants its approval he shall be required to deposit the same only when he has as much as two hundred fifty dollars ($250.00) in his possession, with the municipal treasurer or in a bank, banks, or trust company designated by the governing body in an account approved by the municipal accountant and secured as provided in § 159-28, and he shall report the same immediately following such deposit to the municipal accountant by means of a treasurer's receipt or duplicate deposit ticket signed by the depository: Provided, that a deposit shall in any event be made on the last business day of each month. He shall settle with the municipal accountant monthly, or oftener if the governing body so directs, reporting to the municipal accountant at such time the amount of money collected or received from each of the various sources of revenue. If such officer or employee collects or receives such public moneys for a taxing district for which he is not an officer or an employee, he shall pay over periodically, as directed by the governing body, to the proper officer of such district the amount so collected or received and take receipt therefor.

The governing body is hereby authorized and empowered to select and designate, by recorded ordinance, some bank or banks or trust company in this State as official depository or depositories of the funds of the municipality, which funds shall be secured in accordance with § 159-28.

It shall be unlawful for any public moneys to be deposited by any officer or employee in any place, bank, or trust company other than those selected and designated as official depositories. Any person or corporation violating the provisions of this section or aiding or abetting such violation shall be guilty of a misdemeanor and punished by fine or imprisonment or both, in the discretion of the court. (1955, c. 698.)

§ **160-411.5. Investment of funds.**—Municipalities may, from time to time and upon the terms and conditions hereinafter provided, invest all or any part of the cash balance of any one or more of their funds as defined in subdivision (5) of § 160-409 of this article: Provided, that the provisions of this section shall not apply to sinking funds created and maintained for the payment of term bonds. Such investments shall be authorized by resolution of the governing body, duly adopted and recorded, in which resolution the governing body shall determine

(1) The amount of money of each fund to be invested,

(2) The type of investment in which each such amount is to be invested, and

(3) The period or periods of time in which such amount shall remain so invested. In determining such period or periods the governing body shall exercise due diligence to assure that the amount of money invested shall be available to the municipality as needed for the purpose for which it was raised.

In such resolution the governing body shall designate some officer of the municipality as custodian of the evidences of investment and it shall be his duty to safely keep the same as long as all or any part of the money remains invested. Types of investment shall be limited to the following:

(1) Certificates of deposit of any bank or trust company organized under the laws of this State or organized under the laws of the United States of America and having its principal office in this State: Provided, such bank or trust company shall, upon issuance of a certificate of deposit, furnish security for protection of the deposit in the manner required by law;

(2) Time deposit in any bank or trust company organized under the laws of this State or organized under the laws of the United States of America and having its principal office in this State: Provided, such bank or trust company shall, at the time of such deposit, furnish security for the protection of the deposit in the manner required by law;

(3) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State: Provided, no money may be invested in shares of any building and loan association or of any savings and loan association of amount in excess of the amount insured by the federal government or an agency thereof, and no such investment shall be made except upon condition that such shares shall be redeemable to the municipality upon a maximum of thirty (30) days' notice. Interest

earned on investment shall be prorated and credited to the various funds upon the basis of amounts thereof invested. (1957, c. 864, s. 1.)

Editor's Note.—Section 2 of the act inserting this section, effective July 1, 1957, provides that the powers granted are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns.

§ **160-412. Conduct by municipal accountant constituting misdemeanor.**—If a municipal accountant shall knowingly approve any fraudulent, erroneous or otherwise invalid claim or bill, or make any statement required by this article, knowing the same to be false, or shall willfully fail to perform any duties imposed upon him by this article, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court and shall be liable for all damages caused by such violation or failure. (1955, c. 698.)

§ **160-412.1. Liability for damages for violation by officer or person.**—If any municipal officer or head of any office, department, institution, or agency, or other official or person of whom duties are required by this article shall willfully violate any part of this article, or shall willfully fail to perform any of such duties, he shall be guilty of a misdemeanor and punishable for each offense by a fine of not less than fifty dollars ($50.00) or imprisonment for not less than twenty (20) days, or both fine and imprisonment, in the discretion of the court, and shall be liable for all damages caused by such violation or failure. (1955, c. 698.)

§ **160-412.2. Recovery of damages.**—The recovery of all damages allowed by this article may be made in the court having jurisdiction of the suit of the municipality, any subdivision thereof, or any taxpayer or other person aggrieved. (1955, c. 698.)

§ **160-412.3. Mayor to report to solicitor.**—It shall be the duty of the mayor of the municipality to report to the solicitor of the district within which the municipality lies all facts and circumstances showing the commission of any offenses defined herein, and it shall be the duty of the solicitor to prosecute. At the request of the solicitor, the governing body is authorized within its discretion, to provide legal assistance to the solicitor in prosecuting such cases and any other case involving official misconduct for violation of a public trust within said municipality and pay the cost of same out of the general fund of the municipality. (1955, c. 698.)

§ **160-412.4. Purpose of article.**—It is the purpose of this article to provide a uniform procedure for the preparation and administration of budgets to the end that every municipality in the State may balance its budget on the basis of actual cash receipts within the budget period and carry out its functions without incurring deficits. Its provisions are intended to enable governing bodies to make financial plans to meet expenditures, to insure that municipal officials administer their respective offices, departments, institutions, and agencies in accordance with these plans, and to permit taxpayers and bondholders to form intelligent opinions based on sufficient information as to the financial policies and administration of the municipalities in which they are interested. (1955, c. 698.)

§ **160-412.5. Application of article.**—Sections 160-275 and 160-276 and all other laws and parts of laws heretofore or hereafter enacted, whether general, local, or special, which are in conflict with this article are hereby repealed, except a law hereafter enacted expressly repealing or amending this article: Provided, this article shall be construed with § 160-399 as amended and nothing herein shall be deemed to repeal any of the provisions of that section. Nothing herein contained, however, shall require any municipality to comply with this article which operates under a budget system provided by charter or by any local or special act, but any such municipality may, in the discretion of its governing body, elect to conduct its procedure under any one or more sections of this article as that body may deem best. All such municipalities shall nevertheless be subject to the requirements of certain provisions of this article, which are

(1) the annual publication of financial information substantially as required by § 160-410.7,

(2) the adoption of a budget ordinance which shall appropriate the full amount of all deficits not funded and the full amount required for debt service, and which shall levy sufficient taxes to meet all appropriations, all as required by § 160-410.3,

(3) endorsement by some one municipal officer, who shall either be the municipal accountant or an officer designated for that purpose by the governing body, of all contracts, agreements, requisitions, warrants, and orders, substantially as provided by §§ 160-411 and 160-411.1,

(4) the maintenance of the funds required by subdivision (5), § 160-409, and

(5) compliance with all the provisions of § 160-411.4; and all the provisions of §§ 160-411.2, 160-412, 160-412.1, 160-412.2, and 160-412.3, as to penalties, liability for damage, and requirements for reporting offenses to the district solicitor, shall apply in all such municipalities so far as such municipalities are herein required to comply with this article. (1955, c. 698.)

ARTICLE 34.

Revenue Bond Act of 1938.

§ **160-413. Title of article.**—This article may be cited as the "Revenue Bond Act of One Thousand Nine Hundred and Thirty-Eight." (Ex. Sess. 1938, c. 2, s. 1.)

Editor's Note.—Session Laws 1949, c. 1081, which amended §§ 160-417 and 160-421 and struck out § 160-423, re-enacted this article in its entirety as so changed.

For comment on this article, see 17 N. C. Law Rev. 370.

The very purpose of the Revenue Bond Act is to permit municipalities to engage in nongovernmental activities of a public nature by pledging the revenue derived from such undertakings to the payment of bonds issued in connection therewith. Thus, it avoids pledging the credit of the municipality to the payment of a debt, for by such arrangements no debt is incurred within the meaning of the Constitution. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

§ **160-414. Definitions.**—Wherever used in this article, unless a different meaning clearly appears from the context:

(1) The word "airport" shall mean and shall include lands, runways, lighting and signal systems, terminals, hangars, offices, shops, parking spaces, and each and every structure, improvement, device or facility desirable or useful in connection therewith.

(2) The term "governing body" shall mean the board or body, or boards or bodies, in which the general legislative powers of the municipality are vested.

(3) The term "municipality" as used in this article shall mean any county, city, town, incorporated village, sanitary district, or other political subdivision or public corporation of this State now or hereafter incorporated.

(4) The term "parking facilities" shall mean and shall include lots, garages, parking terminals or other structures (either single or multi-level and either at, above or below the surface) to be used solely for the off-street parking of motor vehicles, open to public use for a fee, including on-street parking meters if so provided by the governing body, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof. The term "cost" as applied to parking facilities or to extensions thereto shall include the cost of acquisition, construction, reconstruction, improvement, betterment, or extension, the cost of all labor, materials, machinery and equipment, the cost of all lands, easements, rights in lands and interests

acquired by the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, and may include, in addition to the items of cost specified in § 160-416, financing charges, cost of plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, improvement, betterment or extension, the financing thereof and the placing of the parking facilities in operation.

(5) The term "undertaking" shall include the following revenue-producing undertakings or any combination of two or more of such undertakings, whether now existing or hereafter acquired or constructed:

a. Airports, docks, piers, wharves, terminals and other transit facilities, abattoirs, armories, auditoria, community buildings, cold storage plants, gymnasia, markets, stadia, swimming pools, hospitals, processing plants and sea products, warehouses, highways, causeways, parkways, viaducts, bridges, and other crossings, teacherages or homes for teachers of public schools, school dormitories and teacherages, club houses and golf courses, and parking facilities.

b. Systems, plants, works, instrumentalities, and properties:

1. used or useful in connection with the obtaining of a water supply and the conservation, treatment, and disposal of water for public and private uses,
2. used or useful in connection with the collection, treatment, and disposal of sewage, garbage, waste and storm water,
3. used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private uses, together with all parts of any such undertaking and all appurtenances thereto including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, plants for the incineration of garbage, intercepting sewers, trunk connection and other sewer and water mains, filtration works, pumping stations, and equipment. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; 1953, c. 922, s. 1.)

Local Modification.—Cabarrus: 1939, c. 288.

Editor's Note.—The 1939 amendment added to paragraph a of subdivision (5) the words "teacherages or homes for teachers of public schools." And the 1941 amendment added after the words quoted the words "school dormitories and teacherages, club houses and golf courses." The 1951 amendment added "parking facilities."

The first 1953 amendment (chapter 901, ratified April 22) inserted "or boards or bodies" in subdivision (2), and also directed that the words "or any group or combination of such counties, cities or towns" be added at the end of subdivision (3). The second 1953 amendment (chapter 922, ratified April 23), which added subdivision (1), also struck out all of subdivision (3) and rewrote the subdivision, omitting the words added by the first amendment and inserting the words "or other political subdivision or public corporation." Only the second 1953 amendment is reflected in subdivision (3) set out above.

Subdivision (4), as Applied to On-Street Parking, Is Void.—A municipality has no authority to charge a fee or toll for the parking of vehicles upon its streets or to lease or let its system of on-street parking meters for operation by a private corporation or individual. Therefore, it may not pledge revenue derived from on-street parking meters to the payment of proposed bonds for off-street parking arrangements, or consolidate into one project on-street and off-street parking. Sections 160-414 (4) and 160-415 (7) as they relate to on-street parking are void. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See note to § 160-499.

§ **160-415. Additional powers.**—In addition to the powers which it may now have, any municipality shall have power under this article:

(1) To acquire by gift, purchase, or the exercise of the right of eminent domain, to construct, to improve, to better, and to extend any undertaking wholly within or wholly without the municipality, or partially within and partially without the municipality; and to acquire by gift, purchase, or the exercise of the right of eminent domain, lands, easements, rights in lands, and water rights in connection therewith;

(2) To operate and maintain any undertaking for its own use, for the use of public and private consumers, and when operated primarily for its own use and users within the territorial boundaries of the municipality, such undertaking may be operated incidentally for users outside of the territorial boundaries of the municipality;

(3) To prescribe, revise, and collect (such collection, in the case of parking facilities, to be made by the use of parking meters therein, if deemed desirable by the governing body) rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking; and in anticipation of the collection of the revenues of such undertaking, to issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(4) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of such undertaking (including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired as well as the revenues of existing systems, plants, works, instrumentalities, and properties of the undertaking so improved, bettered, or extended) or of any part of such undertaking;

(5) To make all contracts, execute other instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payment of its bonds; Provided, no encumbrance, mortgage, or other pledge of property of the municipality is created thereby; and provided, no property of the municipality is liable to be forfeited or taken in payment of said bonds; and provided, no debt on the credit of the municipality is thereby incurred in any manner for any purpose;

(6) To lease all or any part of any undertaking upon such terms and conditions and for such term of years as the governing body may deem advisable to carry out the provisions of this article, and to provide in such lease for the extension or renewal thereof;

(7) In the case of authorizing and issuing bonds for parking facilities, to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any such parking meters heretofore or hereafter installed as it may deem advisable, and to combine into a single undertaking for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by revenue bonds issued under the provisions of this article and to pledge to the payment of such revenue bonds all or any part of the revenues derived from such parking meters.

(8) To sell, and to grant an option or options to purchase (either as a part of any lease or otherwise) all or any part of any undertaking; provided,

however, that the powers granted by this subdivision (8) shall be subject to any limitations or restrictions on the disposal of the undertaking or any part thereof contained in any resolution or resolutions authorizing the issuance of bonds therefor under the provisions of this article; and provided, however, that any sale of any undertaking or part thereof shall not impair the obligation of any revenue bonds issued hereunder or any pledge of revenues for the payment of such bonds or the interest thereof. (Ex. Sess. 1938, c. 2, s. 3; 1951, c. 703, ss. 2, 3; 1953, c. 922, s. 2.)

Editor's Note.—The 1951 amendment inserted the parenthetical clause immediately following the word "collect" in subdivision (3) and added subdivisions (6) and (7).

The 1953 amendment added the words "and to provide in such lease for the extension or renewal thereof" at the end of subdivision (6). It also added subdivision (8).

Subdivision (7) Held Void.—A municipality has no authority to charge a fee or toll for the parking of vehicles upon its streets or to lease or let its system of on-street parking meters for operation by a private corporation or individual. Therefore, it may not pledge revenue derived from on-street parking meters to the payment of proposed bonds for off-street parking arrangements, or consolidate into one project on-street and off-street parking. Sections 160-414 (4) and 160-415 (7) as they relate to on-street parking are void. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See note to § 160-499.

§ **160-416. Procedure for authorization of undertaking and revenue bonds.**—The acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking, and the issuance, in anticipation of the collection of the revenues of such undertaking, of bonds to provide funds to pay the cost thereof, may be authorized under this article by resolution or resolutions of the governing body which may be adopted at a regular or special meeting by a majority of the members of the governing body. Unless otherwise provided therein, such resolution or resolutions shall take effect immediately and need not be laid over or published or posted. The governing body in determining such cost may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses, and interest, which it is estimated will accrue during the construction period and for six months thereafter, on money borrowed or which it is estimated will be borrowed pursuant to this article. (Ex. Sess. 1938, c. 2, s. 4.)

§ **160-417. Bond provisions.**—Revenue bonds may be issued under this article in one or more series; may bear such date or dates, may mature at such time or times, not exceeding thirty-five years from their respective dates; may bear interest at such rate or rates, not exceeding six per centum (6%) per annum, payable at such time or times; may be payable in such medium of payment; at such place or places; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration, conversion, and exchangeability privileges; may be subject to such terms of redemption with or without premium; may be declared or become due before the maturity date thereof; may be executed in such manner, and may contain such terms, covenants, assignments, and conditions as the resolution or resolutions authorizing the issuance of such bonds may provide. All bonds issued under this article bearing the signature of officers in office on the date of the signing thereof shall be valid and binding notwithstanding that before the delivery thereof and payment therefor, such officers whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. Pending the preparation of the definitive bonds, interim receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds to be issued under this article. Said bonds and coupons and said interim receipts shall be negotiable for all purposes, except as restricted by registration, and shall be and are hereby declared to be nontaxable for any and all purposes. (Ex. Sess. 1938, c. 2, s. 5; 1949, c. 1081.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 160-418. Covenants in resolutions.—Any resolution or resolutions authorizing the issuance of bonds under this article to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of an undertaking may contain covenants (notwithstanding that such covenants may limit the exercise of powers conferred by this article) as to:

(1) The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of such undertaking;
(2) The use and disposition of the revenue of said undertaking;
(3) The creation and maintenance of reserves or sinking funds; the regulation, use and disposition thereof;
(4) The purpose or purposes to which the proceeds of the sale of said bonds may be applied, and the use and disposition of such proceeds;
(5) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;
(6) A fair and reasonable payment by the municipality to the account of said undertaking for the services, facilities, or commodities furnished said municipality or any of its departments by said undertaking;
(7) The issuance of other or additional bonds or instruments payable from or a charge against the revenue of such undertaking;
(8) The insurance to be carried thereon, and the use and disposition of insurance moneys;
(9) Books of account and the inspection and audit thereof;
(10) Limitations or restrictions as to the leasing or otherwise disposing of the undertaking while any of the bonds or interest thereon remain outstanding and unpaid; and
(11) The continuous operation and maintenance of the undertaking.

The provisions of this article and of any such resolution or resolutions shall be a contract with every holder of said bonds; and the duties of the municipality and the governing body and the officers of the municipality under this article and under any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding at law or in equity. (Ex. Sess. 1938, c. 2, s. 6.)

§ 160-419. No municipal liability on bonds.—Revenue bonds issued under this article shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon; provided, however, that if there shall be a sale of the undertaking for which bonds were issued while any of the bonds issued for the said undertaking or interest thereon is unpaid, so much of the purchase price as shall be required to pay all of said bonds and interest remaining unpaid together with all the costs and expenses of sale and other costs and expenses in connection with the payment of said bonds and interest shall be applied to the payment of said bonds and interest, and such costs and expenses, or said amount shall be paid into a sinking fund for the payment of said bonds and interest in such manner and with such requirements as shall be prescribed by the resolution or resolutions authorizing the issuance of the bonds. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon; nor to enforce payment thereof against any property of the municipality; nor shall any such bonds constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality. Every bond issued under this article shall contain a statement on its face that "this bond is not a debt of ...., but is payable solely from the revenues of the undertaking for which it is issued, as provided by law and the proceedings in accordance therewith, and the holder hereof has no right to compel the levy of any tax for the payment of this bond or the interest to accrue hereon and has no charge, lien or encumbrance legal or equitable upon any property of said ....". (Ex. Sess. 1938, c. 2, s. 7; 1953, c. 922, s. 3.)

Editor's Note.—The 1953 amendment added the proviso to the first sentence.

Indirect Invocation of Taxing Power.—Defendant municipality proposed to issue bonds to obtain funds for the construction of a municipal hydroelectric generating plant. The city owned and operated its own electric distributing system, and the proposed generating system was to be operated separate and apart therefrom. The resolution of the city authorizing the issuance of the bonds provided that they should be payable solely out of the revenues of the system and the bonds themselves are to contain like provision. It was held that the bonds are not a general indebtedness of the municipality and its taxing power may not be invoked to provide for their payment, and the provision that the city, if it should voluntarily elect to take energy from its generating system for its own uses, should pay the cost of furnishing the energy so taken, which in no event should exceed a fair and reasonable charge therefor, does not indirectly provide for the invocating of the taxing power for the payment of the bonds. McGuinn v. High Point, 217 N. C. 449, 8 S. E. (2d) 462, 128 A. L. R. 608 (1940).

§ 160-420. Right to receivership upon default.—(a) In the event that the municipality shall default in the payment of the principal or interest on any of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days; or in the event that the municipality or the governing body, or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this article or shall default in any agreement made with the holders of the bonds, any holders of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the superior court of the county in which the municipality is located or any court of competent jurisdiction for the appointment of a receiver of the undertaking, whether or not all bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such bonds. Upon such application the superior court or any other court of competent jurisdiction may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such bonds then outstanding, or any trustee for holders of such bonds in such principal amount, shall appoint a receiver of the undertaking.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the undertaking and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the undertaking as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the undertaking, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the undertaking as such receiver may deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds and interest thereon, and upon any other notes, or other obligations, and interest thereon, having a charge, lien, or other encumbrance on the revenues of the undertaking and under any of the terms of any covenants or agreements with holders of bonds shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the undertaking to the municipality, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein. (Ex. Sess. 1938, c. 2, s. 8.)

Cross Reference.—As to authority for municipality to avail itself of provisions of bankruptcy law, see § 23-48.

§ 160-421. Approval of State agencies and sale of bonds by Local Government Commission.—All revenue bonds issued pursuant to this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this article to the United States of America, or any agency thereof, at private sale and without advertisement. It shall not be necessary for any municipality proceeding under this article to obtain any other approval, consent, or authorization of any bureau, board, commission, or like instrumentality of the State for the construction of an undertaking; provided, however, that existing powers and duties of the State Board of Health shall continue in full force and effect; and provided, further, that no municipality shall construct any systems, plants, works, instrumentalities, and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, and power for public and private usage without having first obtained a certificate of convenience and necessity from the North Carolina Utilities Commission, except that this requirement for a certificate of convenience and necessity shall not apply to any such undertaking defined in this proviso which has been authorized or the bonds for which have been authorized by any general, special, or local law enacted prior to April 21, 1949. (Ex. Sess. 1938, c. 2, s. 9; 1949, c. 1081.)

Editor's Note.—The 1949 amendment rewrote this section.

Necessity of Certificate of Convenience.—It is necessary for a city to obtain a certificate of convenience from the Public Utilities Commissioner in order to construct a hydroelectric generating system under this section and the contention of defendant municipality that it came within the proviso of this section since its resolution for the issuance of bonds for this purpose was passed prior to this article under authorization of chapter 473, Public Laws of 1935, is untenable when it appears that the resolution was amended and supplemented by a resolution passed subsequent to this article which made substantial changes, and supplied essential requirements lacking in the original resolution. McGuinn v. High Point, 217 N. C. 449, 8 S. E. (2d) 462, 128 A. L. R. 608 (1940).

Defendant municipality, by resolution of its council, proposed to construct a hydroelectric plant and finance same by issuing bonds under the Revenue Bond Act of 1935 (ch. 473, Public Laws of 1935). Thereafter the council amended the prior resolution by resolution making substantial changes in the original plans so that the bonds contemplated would be issued under the Revenue Bond Act of 1938 (ch. 2, Public Laws, Extra Session of 1938). The General Assembly, by private act, then created a board of power commissioners for the city and gave said board all the powers and duties of the city with respect to the plant proposed by the original resolution of the council and the amendments thereto. It was held that the board of power commissioners was created and authorized to prosecute the project as then constituted, which contemplated the issuance of bonds under the Revenue Bond Act of 1938, and the board is without power to change the fundamental character of the project by resolution rescinding the amendatory resolution of the council and re-enacting the original resolution of the council, so as to bring the project within the purview of the Revenue Bond Act of 1935, and thus obviate the necessity of a certificate of convenience from the Utilities Commissioner. McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

§ 160-421.1. Revenue refunding bonds.—A municipality is hereby authorized to provide for the issuance of revenue refunding bonds of the municipality for the purpose of refunding any revenue bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the municipality, to provide for the issuance of its revenue refunding bonds for the combined purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article and to finance in whole or in part the reconstruction, improvement, betterment or extension of the undertaking for which the bonds to be refunded shall have been issued, or the acquisition, construction, reconstruction, improvement, betterment or extension of any undertaking combined or to be combined with the undertaking for which the bonds to be refunded shall have been issued.

The issuance of such bonds, the maturities and other details thereof, and the rights, duties and obligations of the municipality in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 692.)

§ **160-422. Construction of article.**—The powers conferred by this article shall be in addition and supplemental to, and not in substitution for; and the limitations imposed by this article shall not affect the powers conferred by any other general, special, or local law. Bonds or interim receipts may be issued under this article without regard to the provisions of any other general, special, or local law. The General Assembly hereby declares its intention that the limitations of the amount or percentage of, and the restrictions relating to indebtedness of a municipality and the incurring thereof contained in the Constitution of the State and in any general, special or local law shall not apply to bonds or interim receipts and the issuance thereof under this article. (Ex. Sess. 1938, c. 2, s. 10.)

§ **160-423:** Struck out by Session Laws 1949, c. 1081.

§ **160-424. Article applicable to school dormitories and teacherages.**—All the terms, conditions and provisions of this article are hereby made applicable to the acquisition, construction, reconstruction, improvement, betterment, or extension of school dormitories and teacherages within this State. (Ex. Sess. 1938, c. 5.)

ARTICLE 34A.

Bonds to Finance Sewage Disposal System.

§ **160-424.1. Issuance of bonds by municipality.**—Subject to the provisions of the Municipal Finance Act, 1921, as amended, but notwithstanding any limitation on indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of acquiring, constructing, extending, enlarging or improving a system for the collection, treatment and disposal of sewage (hereinafter sometimes called the "sewage disposal system"), either within or without or partly within and partly without the municipality, and may pledge to the payment of such bonds the revenues of the sewage disposal system as hereinafter provided. Notwithstanding the provisions of § 160-391, such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium as the governing body may provide, with the approval of the Local Government Commission. (1949, c. 1213, s. 1; 1951, c. 941, s. 1.)

Cross Reference.—As to water and sewer authorities, see § 162A-1 et seq.

Editor's Note.—The 1951 amendment inserted "may" in lieu of "to" formerly appearing before "pledge" near the middle of the section and added the last sentence.

§ **160-424.2. Additional powers of municipality.**—In addition to any powers which it may now have under the provisions of any law, a municipality shall have the following powers:

(1) To acquire, construct, extend, enlarge or improve and operate a sewage

disposal system, either within or without or partly within and partly without a municipality;

(2) To fix and collect rates, fees and charges for the services and facilities furnished by a sewage disposal system and to fix and collect charges for making connections with the sewer system of such municipality;

(3) To acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, extension, enlargement, improvement or operation of a sewage disposal system;

(4) To construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipe lines in, along or under any streets, alleys, highways or other public ways;

(5) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any other municipality, sanitary district, private corporation, co-partnership, association or individual providing for or relating to the treatment or disposal of sewage;

(6) To accept from any federal agency loans or grants for the planning, acquisition, extension, enlargement, improvement or lease of a sewage disposal system and to enter into agreements with such agency respecting such loans and grants. (1949, c. 1213, s. 2; 1951, c. 941, s. 2.)

Editor's Note.—The 1951 amendment inserted "sewage disposal system" in lieu of "sewer system" in subdivision (6), inserted subdivision (1) and renumbered the subdivisions of the section.

§ 160-424.3. Fixing or revising schedule of rates, etc., for services and facilities.—Before any municipality may issue bonds under the authority of this article, it shall fix the initial schedule of rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the sewage disposal system, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or use the sewer system of such municipality, and revise such schedule of rates, fees and charges from time to time, so that such rates, fees and charges, with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system and to pay the principal of and the interest on the bonds issued under the provisions of this article as the same shall become due and to provide reserves therefor. (1949, c. 1213, s. 3; 1951, c. 941, s. 3.)

Editor's Note.—The 1951 amendment inserted "with other funds available, shall be at least sufficient at all times to pay all expenses of operating, managing and repairing the sewage disposal system."

§ 160-424.4. Authority to charge and collect rates, fees, etc.; basis of computation; additional charge for cause.—The municipality shall charge and collect the rates, fees and charges fixed or revised pursuant to the authority of this article, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the municipality or of the State or of any sanitary district or other political subdivision of the State.

Such rates, fees and charges shall be just and equitable, and may be used or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than the municipality's water system may be determined by gauging or metering or in any other manner approved by the municipality.

In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewer system, an additional charge may be made therefor, or the municipality may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the municipality before discharging such sewage into any sewer lines owned or maintained by the municipality. (1949, c. 1213, s. 4.)

§ **160-424.5. Inclusion of charges as part of water bill; water disconnected upon failure to pay charges.**—The municipality may provide in the ordinance or resolution authorizing the issuance of bonds under the provisions of this article, that the charges for the services and facilities furnished by any sewage disposal system constructed by the municipality under the provisions of this article shall be included in bills rendered for water consumed on the premises (but such charges shall be stated separately from the water charges) and that if the amount of such charges so included shall not be paid within thirty days from the rendition of any such bills, the municipality may discontinue furnishing water to such premises and may disconnect the same from the waterworks system of the municipality. (1949, c. 1213, s. 5; 1951, c. 941, s. 4.)

Local Modification.—Town of Rutherfordton: 1961, c. 785, s. 2½; town of Spindale: 1961, c. 785, s. 2.

Editor's Note.—The 1951 amendment inserted "sewage disposal system" in lieu of "sewer system or sewer improvements."

§ **160-424.6. Revenues may be pledged to bond retirement.**—Any revenues derived from a sewage disposal system for which bonds shall be issued under the provisions of this article may be pledged to the payment of the principal of and the interest on such bonds and to provide reserves therefor. (1949, c. 1213, s. 6; 1951, c. 941, s. 5.)

Editor's Note.—The 1951 amendment rewrote this section. Prior to the amendment the section was mandatory in requiring that revenue be pledged to bond retirement.

§ **160-424.7. Powers herein granted are supplemental.**—The powers granted by this article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing. (1949, c. 1213, s. 7.)

§ **160-424.8. Refunding bonds; approval and sale of bonds issued under article.**—Any municipality may issue its negotiable bonds for the purpose of refunding any bonds then outstanding and issued under the provisions of this article, or for the combined purposes of (i) paying the cost of any extension, enlargement or improvement of a sewage disposal system and (ii) refunding bonds of the municipality which shall theretofore have been issued under the provisions of this article and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement, and may pledge to the payment of such bonds revenues of the sewage disposal system as above provided. The issuance of such bonds shall be governed by The Municipal Finance Act, 1921, as amended, and the foregoing provisions of this article, in so far as the same may be applicable, and shall not be subject to any limitation on indebtedness contained in The Municipal Finance Act, 1921, as amended, or in any other law. All bonds issued pursuant to this article shall be subject to approval and sale by the Local Government Commission and to delivery by the State Treasurer as provided in the Local Government Act. (1951, c. 941, s. 6.)

Cross Reference.—As to municipal parking authorities, see §§ 160-475 through 160-496.

SUBCHAPTER V. CAPITAL RESERVE FUNDS.

Article 35.

Capital Reserve Funds.

§ **160-425. Short title.**—This article shall be known and may be cited as "The Municipal Capital Reserve Act." (1957, c. 863, s. 1.)

Editor's Note.—Session Laws 1957, c. 863, effective July 1, 1957, repealed the former article, consisting of §§ 160-425 through 160-444, and substituted in lieu thereof the present article, consisting of §§ 160-425 through 160-434. The former article was codified from Session Laws 1943, c. 467 as amended by Session Laws 1945, c. 464.

Powers Supplementary; Capital Reserve Act of 1943.—Session Laws 1957, c. 863, s. 2, provides: "The powers granted to municipalities by this act shall be deemed supplementary to and not in substitution for any like powers heretofore or hereafter granted in their charters or by local act, and capital reserve funds established pursuant to charter provision or local act shall be governed thereby. Reserve funds established pursuant to the Capital Reserve Act of 1943, as amended, and presently existing shall continue to be governed by the provisions thereof, notwithstanding any provision of this act to the contrary."

§ **160-426. Meaning of terms.**—In this article the following terms shall have the following meanings:

(1) "Municipality" means and includes any city and town in this State, now or hereafter incorporated;

(2) "Governing body" means the board or body in which the general legislative powers of the municipality are vested;

(3) "Necessary expenses" means the necessary expenses referred to in § 7 of Article VII of the Constitution of North Carolina. (1957, c. 863, s. 1.)

§ **160-427. Powers conferred.**—In addition to all other funds now authorized by law, a municipality is hereby authorized and empowered to establish and maintain a capital reserve fund in the manner hereinafter provided. (1957, c. 863, s. 1.)

§ **160-428. Establishment of fund.**—When the governing body of any municipality elects to establish a capital reserve fund, it shall adopt an ordinance creating the fund. In such ordinance, the governing body may provide that all or a part of the fund shall be used specifically for any one or more of the purposes enumerated in § 160-432, or it may provide that all or a part of the fund shall be used for any of such enumerated purposes as may later be determined necessary by the governing body. (1957, c. 863, s. 1.)

§ **160-429. Appropriations.**—Upon the adoption of an ordinance establishing a capital reserve fund, the governing body may, pursuant to the provisions of the Municipal Fiscal Control Act, make appropriations from the general fund of the municipality for payment to the capital reserve fund. Thereafter, appropriations may be made in the same manner at any time or from time to time in the discretion of the governing body. (1957, c. 863, s. 1.)

§ **160-430. Depository; security.**—In the ordinance creating the capital reserve fund, the governing body shall designate some bank, banks or trust company in this State as depository in which moneys of the fund shall be deposited. All such deposits shall be secured as provided by § 159-28 of the Local Government Act. (1957, c. 863, s. 1.)

§ **160-431. Investments.**—Pending their use for the purposes hereinafter authorized, all or part of the moneys in the capital reserve fund may be invested in either bonds, notes or certificates of indebtedness of the United States of America; or in bonds or notes of any agency or instrumentality of the United States of America the payment of principal and interest of which is guaranteed by the United States of America; or in bonds or notes of the State of North Carolina; or in bonds of any county, city or town of North Carolina which have been approved by the Local Government Commission for the purpose of such investment; or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States with its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof. The proceeds of the sale or realization of such investments and any interest resulting from such investments shall accrue to the capital reserve fund. (1957, c. 863, s. 1.)

§ **160-432. Purposes of expenditure.**—Subject to the provisions of the ordinance establishing the capital reserve fund, expenditure of moneys in the fund may be made at any time, or from time to time, in the manner hereinafter provided, for all or part of the cost of the following purposes:

(1) Construction, reconstruction or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the obtaining of a water supply and the collection, treatment, and disposal of water for public and private uses;

(2) Constructing, reconstruction, or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the collection, treatment, and disposal of sewage, waste and storm water;

(3) Construction, reconstruction or enlargement of and extensions to systems, plants, works and properties used or useful in connection with the generation, production, transmission, and distribution of gas (natural, artificial or mixed) or electric energy for lighting, heating, and power for public and private uses;

(4) Construction, reconstruction or enlargement of plants used or useful in connection with the collection or disposal of ashes, garbage, or refuse other than sewage;

(5) Construction or reconstructing roads, streets, highways, bridges or culverts, which may include contemporaneous construction or reconstruction of sidewalks, curbs and gutters and necessary grading and drainage;

(6) The elimination of any grade crossing or crossings and improvements incident thereto;

(7) Fire fighting equipment and apparatus and fire and police alarm systems;

(8) Cemeteries;

(9) Buildings used in housing departments of the municipal government.

All of the foregoing purposes are hereby declared to be necessary expenses and the cost thereof shall be deemed to include land, easements, rights in land, water rights, contract rights, franchises, and equipment used or useful in connection with said purposes. (1957, c. 863, s. 1.)

§ **160-433. Withdrawals.**—The governing body shall by resolution authorize withdrawal of moneys in the capital reserve fund. The resolution shall specify the amount of each withdrawal and the purpose or purposes for which such amount shall be expended. In the event that changed conditions make it necessary to use all or part of such fund for some purpose authorized by § 160-432, but not specified in the ordinance establishing the fund the governing body may amend the ordinance to include such other purpose. Such amendment shall declare that changed conditions make it necessary to use all or part of the fund for such other purpose and shall set forth facts which, in the judgment of the governing body, are necessary to show that changed conditions do exist. (1957, c. 863, s. 1.)

§ **160-434. Limitation.**—It shall be unlawful to withdraw or expend or to cause to be withdrawn and expended, all or any part of a capital reserve fund for any purpose other than the purposes authorized by this article. (1957, c. 863, s. 1.)

§§ **160-435 to 160-444:** Repealed by Session Laws 1957, c. 863, s. 1.

SUBCHAPTER VI. EXTENSION OF CORPORATE LIMITS.

Article 36.

Extension of Corporate Limits.

Part 1. In General.

§ 160-445. Procedure for adoption of ordinance extending limits; effect of adoption when no election required.—After public notice has been given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within the municipality, describing by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory, that a session of the municipal legislative body will meet for the purpose of considering the annexation of such territory to the municipality, the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous tract or tracts of land not embraced within the corporate limits of some other municipality. Then from and after the date of the adoption of such ordinance, unless an election is required as herein provided, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 1.)

Editor's Note.—The provisions of this part, that is, §§ 160-445 to 160-453 with the exception of § 160-452, are repealed, effective July 1, 1961, as to certain counties by Session Laws 1959, chapters 1009 and 1010, codified as parts 2 and 3 of this article. See §§ 160-453.11 and 160-453.23. The provisions of this part, however, are continued with respect to certain other counties by the aforesaid Session Laws 1959. See §§ 160-453.12 and 160-453.24.

For comment on this article, see 25 N. C. Law Rev. 453.

The word "municipality" was intended to mean cities and towns and is limited to that meaning. This is apparent from the caption of the act inserting this article and its preamble. State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

A sanitary district is not a "municipality" within the meaning of this section so as to preclude a municipality from annexing territory within a sanitary district. State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

A sanitary district has no right to challenge the enlargement of the boundaries of a municipal corporation to include part of the territory of the sanitary district, since the mere enlargement of the city's boundaries does not appropriate the property of the district or deprive the district of its function of selling water transported through its mains to all its customers living in the districts. State v. Lenoir, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

Cited in Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 160-446. Referendum on question of extension.—If, at the meeting held for such purpose, a petition is filed and signed by at least fifteen per cent (15%) of the qualified voters resident in the area proposed to be annexed requesting a referendum on the question, the governing body shall, before passing said ordinance, annexing the territory, submit the question as to whether said territory shall be annexed to a vote of the qualified voters of the area proposed to be annexed, and the governing body may or may not cause the question to be submitted to the residents of the municipality voting separately. The governing body may, without receipt of a petition, call for a referendum on the question: Provided, however, the governing body of the municipality shall be required to call for a referendum within the municipality if a petition is filed and signed by at least fifteen per cent (15%) of the qualified voters residing in the municipality, who actively participated in the last gubernatorial election. (1947, c. 725, s. 2.)

Attempted Annexation without Election Is Void.—Where, at a meeting of the governing body of a municipality to consider the question of annexing adjacent territory, a petition, requesting a referendum, signed by more than 15% of the qualified voters resident in the area proposed to be annexed, is filed, there can be no annexation of the area unless and until a majority of the qualified voters therein vote in favor thereof in an election called and conducted as prescribed by statute, and in the absence of such election any attempted annexation by ordinance or otherwise would be void. Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954).

But Passage of Void Annexation Ordinance Will Not Be Enjoined.—Where an action was instituted to restrain the governing body of a municipality from passing an ordinance annexing certain territory without first holding an election as required by this section, demurrer to the complaint should have been sustained, since equity will not enjoin the passage of the ordinance even though it would be void. Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954).

§ **160-447. Extent of participation in referendum; call of election.**—Upon receipt of a sufficient petition, or if the board, on its own motion, determines that a referendum shall be held, the local governing body shall determine whether or not the election will be conducted solely in the area to be annexed or simultaneously with the qualified voters of the municipality, and shall order the board of elections of the county in which the municipality is located to call an election to determine whether or not the proposed territory shall be annexed to the city or town. Within sixty (60) days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question. (1947, c. 725, s. 3.)

§ **160-448. Action required by county board of elections; publication of resolution as to election; costs of election.**—Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed, and if ordered by the local governing body, the qualified voters of said city or town voting separately;

(3) Provide for a special registration of voters in the territory proposed to be annexed for said election;

(4) Designate the precincts and voting places for such election;

(5) Name the registrars and judges of such election;

(6) And make all other necessary provisions for the holding and conducting of such election, the canvassing of the returns and the declaration of the results of such election.

Said resolution shall be published in one or more newspapers of the said county once a week for thirty (30) days prior to the opening of the registration books. All cost of holding such election shall be paid by the city or town. Except as herein provided, said election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged. (1947, c. 725, s. 4.)

Cited in Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954).

§ **160-449. Ballots; effect of majority vote for extension.**—At such election those qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension." If at such election a majority of the votes cast from the area proposed for annexation shall be "For

Extension," and, in the event an election is held in the municipality, the majority of the votes cast in the municipality shall also be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all the debts, laws, ordinances, and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. The newly elected territory shall be subject to city taxes levied for the fiscal year following the date of annexation. (1947, c. 725, s. 5.)

Local Modification.—Wake: 1955, c. 177.

Applied in Thomasson v. Smith, 249 N. C. 84, 105 S. E. (2d) 416 (1958).

Cited in Rheinhardt v. Yancey, 241 N. C. 184, 84 S. E. (2d) 655 (1954); Pee Dee Electric Membership Corp. v. Carolina Power & Light Co., 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ **160-450. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.**—Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1947, c. 725, s. 6.)

§ **160-451. Surveys of proposed new areas.**—The governing bodies of the cities and towns are hereby authorized to make the surveys required to properly describe the territory proposed to be annexed. (1947, c. 725, s. 7.)

§ **160-452. Annexation by petition.**—(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

(b) The petition shall be prepared in substantially the following form:

DATE:

To the .... (name of governing board) of the (City or Town) of ....

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of ....

2. The area to be annexed is contiguous to the (City or Town) of .... and the boundaries of such territory are as follows: ....

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of his investigation. Upon receipt of the certification, the municipal governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least ten days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing all persons owning property in the area to be annexed who allege an error in the petition shall be given an opportunity to be heard, as well as residents of the municipality who question the necessity for annexation. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on any specified date within six months from the date of passage of the ordinance.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, or the right of way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation. (1947, c. 725, s. 8; 1959, c. 713.)

Local Modification.—City of Greensboro: 1959, c. 1137, s. 18; town of Atlantic Beach: 1959, c. 395.

Editor's Note.—The 1959 amendment rewrote and greatly extended this section.

§ **160-453. Powers granted supplemental.**—The powers granted by this article shall be supplemental and additional to powers conferred by any other law, and shall not be regarded as in derogation of any powers now existing: Provided, that this article shall not apply to any town or municipality in Dare County. (1947, c. 725, s. 9; 1951, c. 824; 1959, c. 427.)

Editor's Note.—The 1951 amendment rewrote this section.

The 1959 amendment deleted New Hanover County from the proviso thereby making this article applicable to the county.

Part 2. Municipalities of Less than 5,000.

§ **160-453.1. Declaration of policy.**—It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina;

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development;

(3) That municipal boundaries should be extended, in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare; and

(4) That new urban development in and around municipalities having a population of less than five thousand (5,000) persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legisla-

tive standards governing annexation by smaller municipalities can be simpler than those for large municipalities and still attain the objectives set forth in this section;

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation. (1959, c. 1010, s. 1.)

Annexation of territory by a municipality is a legislative and not a judicial act, and in the absence of statutory directive, the court, on appeal from an annexation ordinance, cannot divide the territory and annex a part thereof and refuse to annex the remainder. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Municipality Need Not Acquire Private Water and Sewer Systems.—An annexation ordinance may not be attacked on the ground that the municipality has no plans to purchase or finance the purchase of private water and sewer systems existing in the annexed territory, since the mere existence of such private systems within the territory to be annexed does not compel the city to purchase or acquire ownership of them. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Mere Extension of Limits Does Not Appropriate Such Systems.—Where a municipality annexes territory served by private water or sewer lines, the owners of such lines may not recover the value thereof from the municipality in the absence of provisions for payment by contract or ordinance unless the municipality appropriates such private lines and controls them as proprietor, and the mere extension of the city limits to include such lines or the voluntary maintenance of such lines by the city does not amount to an appropriation of such lines by the municipality. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.2. Authority to annex.**—The governing board of any municipality having a population of less than five thousand (5,000) persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this part. (1959, c. 1010, s. 2.)

The annexation of territory to a municipal corporation is a legislative function which may not be delegated to a court. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Municipality's Discretion Limited to Method of Annexation.—The only discretion given to the governing boards of municipalities is the permission and discretionary right to use the new method of annexation set out in this article, provided such boards conform to the procedure and meet the requirements set out in this part as a condition precedent to the right to annex. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.3. Prerequisites to annexation; ability to serve; report and plans.**—A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in § 160-453.5, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality.

(2) A statement showing that the area to be annexed meets the requirements of § 160-453.4.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a wa-

ter distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines.

b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.

c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed. (1959, c. 1010, s. 3.)

Local Modification.—Town of Beaufort: 1963, c. 1189.

The municipality, as a condition precedent to the right to annex, must file a report showing on its face strict compliance with statutory requirements, and upon review in superior court has the burden of sustaining the regularity, adequacy, veracity and validity of the report and annexation ordinance by competent evidence. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Record Sustaining Finding of Compliance.—Where the record discloses the plans of the municipality for extending municipal services to the area annexed, itemizing the cost, and that such cost would be obtained from current taxes, the record supports a finding by the court of compliance with this section, and such finding will not be disturbed in the absence of evidence to the contrary of sufficient weight to overcome the prima facie presumption of regularity. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.4. Character of area to be annexed.**—(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty per cent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty per cent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality developed land on both sides of the street. (1959, c. 1010, s. 4.)

Annexation Ordinance Statement Insufficient without Specific Findings.—A statement in an annexation ordinance that the area to be annexed is in the process of being developed for urban purposes and that more than 60 per cent of the area is in use for residential, commercial, industrial, governmental or institutional purposes, and at least 60 per cent of the total acreage, not counting the acreage so used, consists of lots and tracts five acres or less in size, does not meet the requirements of this section, the statement being a mere conclusion without specific findings or showing on the face of the record as to the method used by the municipality in making its calculations or any showing as to the present use of any particular tract. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.5. Procedure for annexation.**—(a) Notice of Intent.—Any municipal governing board desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty days and not more than sixty days following passage of the resolution.

(b) Notice of Public Hearing.—The notice of public hearing shall

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration.

(3) State that the report required in § 160-453.3 will be available at the office of the municipal clerk at least fourteen days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than twenty-two days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for thirty days prior to the date of public hearing.

(c) Action Prior to Hearing.—At least fourteen days before the date of the public hearing, the governing board shall approve the report provided for in § 160-453.3, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing.—At the public hearing a representative of the municipality shall first make an explanation of the report required in § 160-453.3. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance.—The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by § 160-453.3 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of § 160-453.3. At any regular or special meeting held no sooner than the seventh day following the public hearing and not later than sixty days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of § 160-453.4 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of § 160-453.4. The external boundaries of the area to be annexed shall be described by metes and bonds. In showing the application of § 160-453.4 (c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by § 160-453.3.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by § 160-453.3 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance.—From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings.—If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

(h) Remedies for Failure to Provide Services.—If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of §§ 160-453.3 (3) and 160-453.5 (e), such person may apply for a writ of mandamus under the provisions of article 40, chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of § 160-453.3 (3) a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of § 160-453.3 (3) a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of § 160-453.3 (3) c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a unit is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1010, s. 5.)

Applied in Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Cited in Duke Power Co. v. Blue Ridge Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ **160-453.6. Appeal.**—(a) Within thirty days following the passage of an annexation ordinance under authority of this part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this part or to meet the requirements set forth in § 160-453.4 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within fifteen days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in § 160-453.3.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this chapter, which review date shall preferably be within thirty days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or

(2) That the provisions of § 160-453.3 were not met, or

(3) That the provisions of § 160-453.4 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of § 160-453.4 if it finds that the provisions of § 160-453.4 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of § 160-453.3 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Supreme Court from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1010, s. 6.)

Record Must Show Prima Facie Compliance.—Upon review in the superior court of a municipal annexation ordinance enacted pursuant to this article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this article as a condition precedent to the right of the municipality to annex the territory. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961); In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Which Puts Burden on Petitioners to Prove Prejudicial Irregularity.—Where, upon review in the superior court of an annexation ordinance, the record of the proceeding shows prima facie that there has been substantial compliance with the requirements and provisions of the annexation statute, the burden is upon petitioners to show by competent evidence failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in the proceedings which materially prejudices the substantive rights of petitioners. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961); In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

The burden is upon petitioners in such case by reason of the presumption that public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Court May Not Amend Record.—The superior court itself is without authority to amend the report, ordinance or other part of the record. This is true even if evidence is presented which justifies amendment. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

But Must Remand Where Compliance Not Shown by Record.—Under this section, if the record of annexation proceedings on its face fails to show substantial compliance with any essential provision of the article, the superior court upon review must remand to the governing board for amendment with respect to such noncompliance. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

When Court May Permit Annexation of Part of Area.—The superior court may permit, under subsection (h) of this section, an annexation ordinance to be effective with respect to a part of the area proposed only when there is no appeal in regard to such part and the municipality agrees to the order for such partial annexation. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

Where an order is issued restraining the operation of an annexation ordinance as to the entire area pending review, subsection (e) of this section has no application, since the statute permits the court to approve the annexation of a part of the proposed area only when no question for review has been raised as to such part. Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.7. Annexation recorded.**—Whenever the limits of a municipality are enlarged in accordance with the provisions of this part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1959, c. 1010, s. 7.)

§ **160-453.8. Authorized expenditures.**—Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1010, s. 8.)

§ **160-453.9. Definitions.**—The following terms where used in this part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.

(2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1010, s. 9.)

Quoted in Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.10. Land estimates.**—In determining degree of land subdivision for purposes of meeting the requirements of § 160-453.4, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in § 160-453.4 have been met on appeal to the superior court under § 160-453.6, the reviewing court shall accept the estimates of the municipality:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five per cent (5%) or more.

(2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five per cent (5%) or more. (1959, c. 1010, s. 10.)

Applied in Huntley v. Potter, 255 N. C. 619, 122 S. E. (2d) 681 (1961).

§ **160-453.11. Effect of part on other laws.**—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of less than five thousand (5,000) persons according to the last preceding federal decennial census. The provisions of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1010, s. 11; 1961, c. 655, s. 1.)

Editor's Note.—The 1961 amendment changed "1961," appearing in the second and third sentences, to "1962."

§ **160-453.12. Counties excepted from part; part 1 continued for such counties.**—The provisions of this part shall not apply to the following counties: Alleghany, Cumberland, Edgecombe, Franklin, Halifax, Harnett, Iredell, Nash, Pender, Perquimans, Person and Randolph, provided the provisions of this part shall apply to the town of Battleboro in Edgecombe and Nash counties.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G. S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1010, s. 12; 1961, c. 1081.)

Editor's Note.—The 1961 amendment added at the end of the first paragraph "provided the provisions of this part shall apply to the town of Battleboro in Edgecombe and Nash counties."

Part 3. Municipalities of 5,000 or More.

§ **160-453.13. Declaration of policy.**—It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina;

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;

(3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;

(4) That new urban development in and around municipalities having a population of five thousand (5,000) or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation. (1959, c. 1009, s. 1.)

Quoted in In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

§ **160-453.14. Authority to annex.**—The governing board of any municipality having a population of five thousand (5,000) or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this part. (1959, c. 1009, s. 2.)

This section is constitutional. In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

No Discretion Delegated to Municipalities.—It is clear that by the enactment of part 3 of this article the General Assembly did not delegate to the municipalities of the State having a population of 5,000 or more any discretion with respect to the provisions of the law. The guiding standards and requirements of the act are set out in great detail. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation, provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

§ 160-453.15. Prerequisites to annexation; ability to serve; report and plans.—A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in § 160-453.17, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
  a. The present and proposed boundaries of the municipality.
  b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section.
  c. The general land use pattern in the area to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of § 160-453.16.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
  a. Provide for extending police protection, fire protection, garbage collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines.
  b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.
  c. If extension of major trunk water mains and sewer outfall lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains and outfalls as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within twelve months following the effective date of annexation.
  d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed. (1959, c. 1009, s. 3.)

Plans for Extension of Services Must Be Made.—The requirement of plans for extension to the area to be annexed of all major municipal services performed within the municipality at the time of annexation is a condition precedent to annexation. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

And City May Not Delegate Duty of Extending Services.—The city must furnish major municipal services to areas annexed as provided by parts 2 and 3 of this article. The performance of this duty may not be made to depend upon a doubtful contingency, and may not be delegated to others by the city so as to relieve the city of the duty. If other parties are obligated to the city to perform such duty, the city must enforce the obligation directly against such parties and may not be otherwise relieved of its primary duty to the area which it seeks to make a part of the city for all other purposes. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

But Plans May Provide for Only Needed Services.—Plans for extension of services may, of course, take into consideration all circumstances and provide only for services if and when needed. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Thus, City Must Plan to Maintain Streets.—So far as an annexation proceeding is concerned, the primary duty of street maintenance in an area after annexation is upon the city, and it must in good faith make plans to maintain the streets, whether paved or unpaved, "on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation." In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

And Not Limit Its Duty to Streets Meeting Certain Standards.—A municipality may not limit its obligations to maintain streets in the area to be annexed by it to those streets which are improved to stipulated standards by the landowners and developers in the area. Any obligation of the landowners and developers to the city to improve the streets is a matter between them and the municipality and is irrelevant to the question of the sufficiency of the annexation ordinance to meet the requirements of the statute. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Even if the property owners and developers in the area to be annexed are under duty to the city to pave all streets and provide storm sewers and curb and gutter, the city is in no position to rely on this obligation in an annexation proceeding and thereby shift to others the duty which this article imposes on the city as a condition precedent to annexation. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

And May Not Limit Water and Sewer Services to Existing Lines.—Where an annexation ordinance contains no plans for the municipality to extend water and sewer services in the area to be annexed beyond those services presently in existence in the area unless the water and sewer lines are extended by landowners and developers in the area, the ordinance fails to meet the requirements of subdivision (3) b of this section. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Since Equal Service Is Required.—This article requires that the services be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service to consumers within its corporate limits, as a general rule. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

The cost of water and sewer extensions may be assessed upon the lots or parcels of land abutting directly on lateral mains of water and sewer systems pursuant to §§ 160-241 to 160-248 and 160-255. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Full Compliance as to Police and Fire Protection Shown.—Record of annexation proceedings held to show prima facie full compliance with this section in regard to extension of police and fire protection to the area to be annexed. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Cited in Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

§ **160-453.16. Character of area to be annexed.**—(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and

tracts such that at least sixty per cent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty per cent (60%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty per cent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty per cent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely-developed area; or

(2) Is adjacent, on at least sixty per cent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than 200 feet beyond the right of way of the street. (1959, c. 1009, s. 4.)

Inclusion of Undeveloped Tract.—Where the area proposed to be annexed by a municipality, when considered as a whole, meets the requirements of subsections (b) and (c) of this section, the fact that a part of the area is an undeveloped tract which does not comply with the standards set out in statute does not require that such part be excluded from annexation. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

The language of this section simply means that where a developed tract and an undeveloped tract are included in an area to be annexed, and the developed tract complies with subsection (c), but when the undeveloped tract is added, the area as a whole does not so comply, then the undeveloped tract must be excluded unless it complies with one of the requirements of subsection (d). In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Record of annexation proceedings held to show prima facie full compliance with requirements of this section as to the character of the area to be annexed. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Cited in In re Annexation Ordinances, 253 N. C. 637, 117 S. E. (2d) 795 (1961).

§ **160-453.17. Procedure for annexation.**—(a) Notice of Intent.—Any municipal governing board desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty days and not more than sixty days following passage of the resolution.

(b) Notice of Public Hearing.—The notice of public hearing shall

(1) Fix the date, hour and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration.

(3) State that the report required in § 160-453.15 will be available at the office of the municipal clerk at least fourteen days prior to the date of the public hearing.

Such notice shall be given by publication in a newspaper having general circulation in the municipality once a week for at least four successive weeks prior to the date of the hearing. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than twenty-two days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for thirty days prior to the date of public hearing.

(c) Action Prior to Hearing.—At least fourteen days before the date of the public hearing, the governing board shall approve the report provided for in § 160-453.15, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution.

(d) Public Hearing.—At the public hearing a representative of the municipality shall first make an explanation of the report required in § 160-453.15. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance.—The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by § 160-453.15 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of § 160-453.15. At any regular or special meeting held no sooner than the seventh day following the public hearing and no later than sixty days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of § 160-453.16 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of § 160-453.16. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of § 160-453.16 (c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by § 160-453.15.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls found necessary in the report required by § 160-453.15 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve months from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance.—From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this part. If the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed which was listed for taxation as of said January 1. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(g) Simultaneous Annexation Proceedings.—If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

(h) Remedies for Failure to Provide Services.—If, not earlier than one year from the effective date of annexation, and not later than fifteen months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of §§ 160-453.15 (3) and 160-453.17 (e), such person may apply for a writ of mandamus under the provisions of article 40, chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of § 160-453.15 (3) a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of § 160-453.15 (3) a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of § 160-453.15 (3) c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1009, s. 5.)

Quoted in Upchurch v. Raleigh, 252 N. C. 676, 114 S. E. (2d) 772 (1960).

§ **160-453.18. Appeal.**—(a) Within thirty days following the passage of an annexation ordinance under authority of this part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this part or to meet the requirements set forth in § 160-453.16 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within fifteen days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in § 160-453.15.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this chapter, which review date shall preferably be within thirty days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or

(2) That the provisions of § 160-453.15 were not met, or

(3) That the provisions of § 160-453.16 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of § 160-453.16 if it finds that the provisions of § 160-453.16 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of § 160-453.15 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Supreme Court from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Supreme Court; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1009, s. 6.)

Record Must Show Prima Facie Compliance.—Upon review in the superior court of a municipal annexation ordinance enacted pursuant to parts 2 and 3 of this article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this article as a condition precedent to the right of the municipality to annex the territory. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

Which Puts Burden on Petitioners to Prove Prejudicial Irregularity.—Where an appeal is taken from an annexation ordinance and a petition has been filed requesting review of the annexation proceedings, and the proceedings show prima facie that there has been substantial compliance with the requirements and provisions of this article, the burden is upon petitioners to show by competent evidence failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in proceedings which materially prejudice the substantive rights of petitioners. In re Annexation Ordinance, 255 N. C. 633, 122 S. E. (2d) 690 (1961).

§ **160-453.19. Annexation recorded.**—Whenever the limits of a municipality are enlarged in accordance with the provisions of this part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. (1959, c. 1009, s. 7.)

§ **160-453.20. Authorized expenditures.**—Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1009, s. 8.)

§ **160-453.21. Definitions.**—The following terms where used in this part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.

(2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1009, s. 9.)

§ **160-453.22. Population and land estimates.**—In determining population and degree of land subdivision for purposes of meeting the requirements of § 160-453.16, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in § 160-453.16 have been met on appeal to the superior court under § 160-453.18, the reviewing court shall accept the estimates of the municipality:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten per cent (10%) or more.

(2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five per cent (5%) or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five per cent (5%) or more. (1959, c. 1009, s. 10.)

§ **160-453.23. Effect of part on other laws.**—From and after July 1, 1959, this part shall be in full force and effect with respect to all municipalities having a population of five thousand (5,000) or more persons according to the last preceding federal decennial census. The provisions of article 36 of chapter 160 of the General Statutes of North Carolina shall remain in full force and effect with respect to such municipalities as an alternative procedure until June 30, 1962. From and after July 1, 1962, all the provisions of article 36 of chapter 160 of the General Statutes of North Carolina, with the exception of § 160-452 as it exists at the time of the passage of this part or as it may be amended at this session of the General Assembly, shall be repealed. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling. (1959, c. 1009, s. 11; 1961, c. 655, s. 2.)

Editor's Note.—The 1961 amendment changed "1961" in the second and third sentences to "1962."

§ **160-453.24. Counties excepted from part; part 1 continued for such counties.**—The provisions of this part shall not apply to the following counties: Columbus, Cumberland, Franklin, Halifax, Harnett, Pender, Perquimans and Randolph.

Notwithstanding any other provisions of this part, part 1 of article 36 of chapter 160 of the General Statutes of North Carolina and specifically G. S. 160-452, as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 1009, s. 12; 1961, cc. 468, 787; 1963, c. 728.)

Editor's Note.—The first 1961 amendment deleted "Edgecombe" and "Nash" from the list of counties. And the second 1961 amendment deleted "Iredell" from the list.

The 1963 amendment deleted "Person" from the list of counties.

SUBCHAPTER VII. URBAN REDEVELOPMENT.

Article 37.

Urban Redevelopment Law.

§ **160-454. Short title.**—This article shall be known and may be cited as the "Urban Redevelopment Law." (1951, c. 1095, s. 1.)

Constitutionality.—The Urban Redevelopment Law does not confer any illegal delegation of legislative power in violation of N. C. Const., Art. II, § 1. Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960); Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

The Urban Redevelopment Law is a constitutional delegation of power by the State to municipal corporations. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Condemnation of blighted and slum areas within a municipality for redevelopment under safeguards to prevent such areas from reverting to slum areas is in the interest of the public health, safety, morals and welfare, and therefore such condemnation is for a public use and is not a taking of private property in violation of N. C. Const., Art. I, § 1 or § 17. Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

The ultimate result which the Urban Redevelopment Law seeks to achieve is to eliminate the injurious consequences caused by a blighted area in a municipality and to substitute for them a use of the area which it is hoped will render impossible future blight and its injurious consequences. This is, in its broad purpose, a preventive measure. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

The General Assembly has prescribed a definite and adequate guide, and the governing body of the municipality in creating or not creating a redevelopment commission cannot act "in its absolute or unguided discretion." Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

Wisdom of Article a Legislative Question.—It may be that the urban redevelopment project may prove eventually to be a disappointment, and is ill advised, but the wisdom of the enactment is a legislative and not a judicial question. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Redevelopment Expenses Are Not "Necessary Expenses."—The expenses incurred, or to be incurred, by a municipality in putting into effect an urban redevelopment plan, pursuant to the authority vested in it by the Urban Redevelopment Law, are not expenses incurred, or to be incurred, by a municipality in the maintenance of public peace or administration of justice, do not partake of a governmental nature, and do not purport to be an exercise by a municipality of a portion of the State's delegated sovereignty, and consequently are not "necessary expenses" within the purview of Const., Art. VII, § 6. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

Cited in Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

§ 160-455. Findings and declaration of policy.—It is hereby determined and declared as a matter of legislative finding:

(1) That there exist in urban communities in this State blighted areas as defined herein.

(2) That such areas are economic or social liabilities, inimical and injurious to the public health, safety, morals and welfare of the residents of the State, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

(3) That the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities.

(4) That the foregoing conditions are beyond remedy or control entirely by regulatory processes in the exercise of the police power and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted.

(5) That the acquisition, preparation, sale, sound replanning, and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the State of North Carolina to promote the health, safety, and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as redevelopment commissions, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. (1951, c. 1095, s. 2.)

Quoted in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ **160-455.1. Additional findings and declaration of policy.**—It is further determined and declared as a matter of legislative finding:

(1) That the cities of North Carolina constitute important assets for the State and its citizens; that the preservation of the cities and of urban life against physical, social, and other hazards is vital to the safety, health, and welfare of the citizens of the State, and sound urban development in the future is essential to the continued economic development of North Carolina, and that the creation, existence, and growth of substandard areas present substantial hazards to the cities of the State, to urban life, and to sound future urban development.

(2) That blight exists in commercial and industrial areas as well as in residential areas, in the form of dilapidated, deteriorated, poorly-ventilated, obsolete, over-crowded, unsanitary, or unsafe buildings, inadequate and unsafe streets, inadequate lots, and other conditions detrimental to the sound growth of the community; that the presence of such conditions tends to depress the value of neighboring properties, to impair the tax base of the community, and to inhibit private efforts to rehabilitate or improve other structures in the area; and that the acquisition, preparation, sale, sound replanning and redevelopment of such areas in accordance with sound and approved plans will promote the public health, safety, convenience and welfare.

(3) That not only is it in the interest of the public health, safety, convenience and welfare to eliminate existing substandard areas of all types, but it is also in the public interest and less costly to the community to prevent the creation of new blighted areas or the expansion of existing blighted areas; that vigorous enforcement of municipal and State building standards, sound planning of new community facilities, public acquisition of dilapidated, obsolescent buildings, and other municipal action can aid in preventing the creation of new blighted areas or the expansion of existing blighted areas; and that rehabilitation, conservation, and reconditioning of areas in accordance with sound and approved plans, where, in the absence of such action, there is a clear and present danger that the area will become blighted, will protect and promote the public health, safety, convenience and welfare.

Therefore it is hereby declared to be the policy of the State of North Carolina to protect and promote the health, safety, and welfare of the inhabitants of its urban areas by authorizing redevelopment commissions to undertake nonresidential redevelopment in accord with sound and approved plans and to undertake the rehabilitation, conservation, and reconditioning of areas where, in the absence of such action, there is a clear and present danger that the area will become blighted. (1961, c. 837, s. 1.)

§ **160-456. Definitions.**—The following terms where used in this article, shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Area of operation"—The area within the territorial boundaries of the city for which a particular commission is created.

(2) "Blighted area" shall mean an area in which there is a predominance of

buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least two-thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(3) "Bonds"—Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this article.

(4) "City"—Any city or town. "The city" shall mean the particular city for which a particular commission is created.

(5) "Commission" or "redevelopment commission"—A public body and a body corporate and politic created and organized in accordance with the provisions of this article.

(6) "Field of operation"—The area within the territorial boundaries of the city for which a particular commission is created.

(7) "Governing body"—In the case of a city or town, the city council or other legislative body.

(8) "Government"—Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.

(9) "Municipality"—Any incorporated city or town.

(10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,
b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,
c. Defective or inadequate street layout,
d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,
e. Tax or special assessment delinquency exceeding the fair value of the property,
f. Unsanitary or unsafe conditions,
g. The existence of conditions which endanger life or property by fire and other causes, or
h. Any combination of such factors
    1. Substantially impairs the sound growth of the community,
    2. Has seriously adverse effects on surrounding development, and
    3. Is detrimental to the public health, safety, morals or welfare;

provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(11) "Obligee of the commission" or "obligee"—Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.

(12) "Planning commission"—Any planning commission established by ordinance for a municipality of this State. "The planning commission" shall mean the particular planning commission of the city or town in which a particular commission operates.

(13) "Real property"—Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(14) "Redeveloper"—Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this article.

(15) "Redevelopment"—The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this article with respect to the area for which such program is undertaken.

(16) "Redevelopment area"—Any area which a planning commission may find to be

  a. A blighted area because of the conditions enumerated in subdivision (2) of this section,
  b. A nonresidential redevelopment area because of conditions enumerated in subdivision (10) of this section;
  c. A rehabilitation, conservation, and reconditioning area within the meaning of subdivision (21) of this section;
  d. Any combination thereof, so as to require redevelopment under the provisions of this article.

(17) "Redevelopment contract"—A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this article.

(18) "Redevelopment plan"—A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this article.

(19) "Redevelopment project" shall mean any work or undertaking:

  a. To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;

b. To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

c. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;

d. To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

(20) "Redevelopment proposal"—A proposal, including supporting data and the form of a redevelopment contract for the redevelopment of all or any part of a redevelopment area.

(21) "Rehabilitation, conservation, and reconditioning area" shall mean any area which the planning commission shall find, by reason of factors listed in subdivision (2) or subdivision (10), to be subject to a clear and present danger that, in the absence of municipal action to rehabilitate, conserve, and recondition the area, it will become in the reasonably foreseeable future a blighted area or a nonresidential redevelopment area as defined herein. In such an area, no individual tract, building, or improvement shall be subject to the power of eminent domain, within the meaning of this article, unless it is of the character described in subdivision (2) or subdivision (10) and substantially contributes to the conditions endangering the area; provided that if the power of eminent domain shall be exercised under the provisions of this article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners. (1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6.)

Editor's Note.—The 1957 amendment made changes in subdivisions (2), (9) and (15).

The 1961 amendment substituted "Area" for "Field" in the caption of subdivision (1), rewrote subdivision (16), deleted "area" from the caption of subdivision (18), deleted the words "submitted for approval to the governing body by a commission" formerly appearing after the word "contract" in subdivision (20), added subdivisions (10) and (21), and changed subdivision (19) by rewriting paragraph a and adding paragraph d.

Applied in Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

Cited in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ 160-457. Formation of commissions.—(a) Each municipality, as defined herein, is hereby authorized to create separate and distinct bodies corporate and politic to be known as the redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance or resolution creating a commission to function within the territorial limits of said municipality. Notice of the intent to consider the passage of such a resolution or ordinance shall be published at least ten days prior to the meeting.

(b) The governing body of a municipality shall not adopt a resolution pursuant to subsection (a) above unless it finds:

(1) That blighted areas (as herein defined) exist in such municipality, and

(2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

(c) The governing body shall cause a certified copy of such ordinance or resolution to be filed in the office of the Secretary of State; upon receipt of the said certificate the Secretary of State shall issue a certificate of incorporation.

(d) In any suit, action or proceeding involving or relating to the validity or enforcement of any contract or act of a commission, a copy of the certificate of incorporation duly certified by the Secretary of State shall be admissible in evidence and shall be conclusive proof of the legal establishment of the commission. (1951, c. 1095, s. 4.)

Cited in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ **160-458. Appointment and qualifications of members of commission.**—Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, five citizens who shall be residents of the city or town in which the commission is to operate. (1951, c. 1095, s. 5.)

§ **160-459. Tenure and compensation of members of commission.**—The members who are first appointed shall serve for terms of one, two, three, four and five years, respectively, from the date of their appointment as shall be specified at the time of their appointment. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive no compensation for this service, but shall be entitled within the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6.)

§ **160-460. Organization of commission.**—The members of a commission shall select from among themselves a chairman, a vice-chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. Three members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7.)

§ **160-461. Interest of members or employees.**—No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project. The acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any redevelopment project, he shall disclose the same in writing to the commission and to the local governing body, and such disclosure shall be entered in writing upon the minute books of the commission. Failure to make such disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8.)

§ **160-462. Powers of commission.**—A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to those herein otherwise granted:

(1) To procure from the planning commission the designation of areas in need of redevelopment and its recommendation for such redevelopment;

(2) To co-operate with any government or municipality as herein defined;

(3) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this article;

(4) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;

(5) Subject to the provisions of § 160-464 (b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (nothwithstanding anything to the contrary contained in this article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(6) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property, and notwithstanding the provisions of § 160-59 but subject to the provisions of § 160-464, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts with "redevelopers" of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any

breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this article;

(7) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursements, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;

(8) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this article;

(9) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(10) Within its area of operation, to make or have made all surveys, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building, or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or co-operate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

A redevelopment commission is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The redevelopment commission is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

(11) To make such expenditures as may be necessary to carry out the purposes of this article; and to make expenditures from funds obtained from the federal government;

(12) To sue and be sued;
(13) To adopt a seal;
(14) To have perpetual succession;
(15) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of the commission shall be held to have been properly executed for and on its behalf;
(16) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;
(17) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7.)

Editor's Note.—The 1961 amendment substituted "plan" for "proposal" near the middle of subdivision (6) and added the second paragraph to subdivision (10).

Necessary Facts Must Be Alleged in Each Separate Proceeding.—If a redevelopment commission elects to institute a separate and distinct proceeding for each parcel of land taken, it must, in each instance, allege all the facts necessary to justify the taking. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

But Owners of Different Tracts May Be Joined in One Proceeding.—Where it is sought to condemn several tracts of land belonging to different owners, all the owners may be joined in one proceeding, in the absence of any statutory provision to the contrary. Such a course is convenient, and can injure no one if damages are separately assessed to each owner. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Each owner is entitled to defend upon the ground his property does not qualify for the purpose intended, or that its selection was the result of arbitrary or capricious conduct on the part of the taking agency. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

§ 160-463. Preparation and adoption of redevelopment plans.—(a) A commission shall prepare a redevelopment plan for any area certified by the planning commission to be a redevelopment area. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan, if any, (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the area.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;
(2) A land use plan of the area showing proposed uses following redevelopment;
(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;
(4) A preliminary site plan of the area;
(5) A statement of the proposed changes, if any, in zoning ordinances or maps;
(6) A statement of any proposed changes in street layouts or street levels;
(7) A statement of the estimated cost and method of financing of acquisition of

the redevelopment area, and of all other costs necessary to prepare the area for redevelopment;

(8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this article;

(9) A statement of a feasible method proposed for the relocation of the families displaced.

(e) The commission shall hold a public hearing prior to its final determination of the redevelopment plan. Notice of such hearing shall be given once a week for two successive calendar weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing.

(f) The commission shall submit the redevelopment plan to the planning commission for review. The planning commission, shall, within forty-five days, certify to the redevelopment commission its recommendation on the redevelopment plan, either of approval, rejection or modification, and in the latter event, specify the changes recommended.

(g) Upon receipt of the planning commission's recommendation, or at the expiration of forty-five days, if no recommendation is made by the planning commission, the commission shall submit to the governing body the redevelopment plan with the recommendation, if any, of the planning commission thereon. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a co-ordinated, adjusted and harmonious development of the community and its environs, which will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangements, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions or blight.

(h) The governing body, upon receipt of the redevelopment plan and the recommendation (if any) of the planning commission, shall hold a public hearing upon said plan. Notice of such hearing shall be given once a week for two successive weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than fifteen days prior to the date fixed for said hearing. The notice shall describe the redevelopment area by boundaries, in a manner designed to be understandable by the general public. The redevelopment plan, including such maps, plans, contracts, or other documents as form a part of it, together with the recommendation (if any) of the planning commission and supporting data, shall be available for public inspection at a location specified in the notice for at least ten days prior to the hearing.

At the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known, and consider recommendations in writing with reference to the redevelopment plan.

(i) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(j) Upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this article.

(k) A redevelopment plan may be modified at any time by the commission; provided that, if modified after the sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body as provided above. (1951, c. 1095, s. 10; 1961, c. 837, s. 8.)

Editor's Note.—The 1961 amendment deleted "area" formerly appearing before "plan" at the beginning of subsection (d), rewrote subsection (e), substituted "plan" for "proposal" in subsections (f) and (g), and made changes in subsections (h), (i) and (j).

An urban redevelopment plan is not a necessary expense of a municipality within the meaning of Const., Art. VII, § 6, and therefore a municipality may be enjoined from spending ad valorem taxes or levying taxes and issuing bonds for an urban redevelopment project until and unless such project is approved by a majority of the qualified voters of such municipality, and any provisions of §§ 160-466 (b) and 160-470 authorizing a municipality to levy taxes and issue bonds for such purpose without a vote are unconstitutional. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

The adoption of the redevelopment plan is equivalent to a cease and desist order preventing any development, rental, or sale of the property within the area. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Each landowner has the right to know that the taking agency has on hand the money to pay for his property or, in lieu thereof, has present authority to obtain it. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

And Showing of Plan to Finance Entire Area Is Required.—In order that property owners may be protected against threatened taking which is never consummated, the act wisely requires a showing that the acquiring agency has a lawful plan by which, among other things, it may lawfully finance the whole area. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Ability to finance the acquisition of one or two tracts is not a showing of a proper plan for financing the development, including the arrangements for relocating displaced families. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

Separate Plan for Each Parcel Not Contemplated.—It is seriously questioned whether the legislature contemplated a separate judicial proceeding for each lot or parcel of land any more than it contemplated a separate plan for each parcel. Redevelopment Comm. of Greensboro v. Hagins, 258 N. C. 220, 128 S. E. (2d) 391 (1962).

§ 160-464. Provisions of the redevelopment contract; powers of the commission; procedure on sale or contract.—(a) A commission may sell, exchange or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this article; provided, that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after, or subject to, the approval of the redevelopment plan by the governing body of the municipality and after public notice and award as hereinafter specified in subsection (b).

(b) Except as hereinafter specified, no sale of any property by the commission or contract for the accomplishment of any redevelopment project by the commission or any contract with a developer shall be effected except after advertisement bid and awarded as hereinafter set out. The commission shall by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the municipality prior to the consideration of any sale or redevelopment or other contract proposal invite proposals and make available all pertinent information to any persons interested in undertaking a purchase of property, a contract or the redevelopment of an area or any part thereof. Such notice shall identify the property affected, shall specify in outline the property to be conveyed, the work to be accomplished and the conditions of the contract and shall state that further information may be obtained at the office of the commission. The commission may require such bid bond as it deems appropriate. After receipt of all bids, the contract shall be awarded to the lowest responsible bidder or the sale made to the highest responsible bidder as the case may be; provided, nothing herein shall prevent the sale at private sale to the municipality or other public body, or to a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable, or religious purposes, of such property as is specified in, and subject to the requirements of, subdivisions (c) (1), (2), (3) or (4) of this section; provided further, that nothing herein shall prohibit the commission from negotiating contracts with a municipality to perform such work as the commission shall deem appropriate. All bids may be rejected. All sales shall be subject to the approval of the governing body of the municipality. After any such required approval by the governing body of the municipality, the commission may execute such redevelopment or other contract and deliver deeds and other instruments and take all steps necessary to effectuate such redevelopment or other contract or sale. The commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid and may similarly sell personal property of a value of less than $500 at private sale.

(c) In carrying out a redevelopment project, the commission may:

(1) Convey to the municipality in which the project is located with or without consideration such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways, at private sale;

(2) Grant easements and rights of way, for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan; and

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body, such real property, as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) After a public hearing advertised in accordance with the provisions of G. S. 160-463 (e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable, or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this section shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(d) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. The contract between the commission and a redeveloper shall contain, without being limited to the following provisions:

(1) Plans prepared by the redeveloper or otherwise and other such documents as may be required to show the type, material, structure and general character of the redevelopment project;

(2) A statement of the use intended for each part of the project;

(3) A guaranty of completion of the redevelopment project within specified time limits;
(4) The amount, if known, of the consideration to be paid;
(5) Adequate safeguards for proper maintenance of all parts of the project;
(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this article.

(e) Any deed to a redeveloper in furtherance of a redevelopment contract shall be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this article. (1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2.)

Editor's Note.—The 1961 amendment changed subsection (b) by substituting "two" for "four" in the second sentence, rewriting the third sentence from the end of the subsection and inserting "any such required" before "approval" in the next to last sentence. It also inserted the words "rent or lease" near the beginning of subsection (d).

The 1963 amendment rewrote the first proviso of the fifth sentence of subsection (b) and added subdivision (4) of subsection (c).

Section 4 of the 1963 amendatory act provides that it shall not apply to the counties of Craven, Duplin, Edgecombe, Forsyth, Macon, Madison, Mecklenburg, New Hanover, Swain and Yancey.

Sale of Condemned Property to Private Persons.—The fact that a municipal redevelopment commission may exchange, sell or transfer to private persons slum property condemned by it for redevelopment does not affect the question of whether the taking is for a public use, since the statute provides safeguards in the use and control of the land by the private developer to prevent the area from again becoming a blighted area, and the sale or transfer to the redeveloper is merely incidental or collateral to the primary purpose of clearing the slum area in the interest of the public health, safety, morals and welfare. Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ **160-465. Eminent domain.**—Title to any property acquired by a commission through eminent domain shall be an absolute or fee simple title, unless a lesser title shall be designated in the eminent domain proceedings. The commission may exercise the right of eminent domain in the manner provided by law for the exercise of such right by municipalities, except that § 40-10 of the General Statutes shall not apply to such commission. If any of the real property in the redevelopment area which is to be acquired has, prior to such acquisition, been devoted to another public use, it may, nevertheless, be acquired by condemnation; provided, that no real property belonging to any municipality or county or to the State may be acquired without its consent. (1951, c. 1095, s. 12.)

Applied in Greensboro v. Wall, 247 N. C. 516, 101 S. E. (2d) 413 (1958).

§ **160-466. Issuance of bonds.**—(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or
(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the commission (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said commission acquired for the purpose of this article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. Bonds may be issued by a commission under this article notwithstanding any debt or other limitation prescribed in any statute. This article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission hereunder and such authorization and issuance shall not be subject to any conditions, restrictions or limitations imposed by any other statute whether general, special or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) Bonds shall be sold by the redevelopment commission at public sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least ten days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the city of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission to the government at private sale upon such terms and conditions as are mutually agreed upon between the commission and the government. No bonds issued pursuant to this article shall be sold at less than par and accrued interest. The provisions of the Local Government Act shall not be applicable with respect to bonds sold or issued under this article.

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this article. (1951, c. 1095, s. 13; 1961, c. 837, s. 10.)

Editor's Note.—The 1961 amendment rewrote subsection (d).

Constitutionality.—Any provisions of subsection (d) of this section and § 160-470 to the effect that bonds may be sold and issued by a redevelopment commission for the purpose of carrying out the provisions of an urban redevelopment plan or project under the provisions of the Urban Redevelopment Law, or that any municipality located within the area of such a commission may appropriate funds to a redevelopment commission for the purpose of aiding such a commission in carrying out any of its powers and functions under the Urban Redevelopment Law, and to obtain funds for this purpose, the municipality may levy taxes, and may in the manner prescribed by law issue and sell its bonds, without the approval of a vote of the qualified voters in the municipality, are repugnant to the provisions of Const., Art. VII, § 6. Horton v. Redevelopment Comm. of High Point, 259 N. C. 605, 131 S. E. (2d) 464 (1963).

§ **160-467. Powers in connection with issuance of bonds.**—(a) In connection with the issuance of bonds or the incurring of obligations and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof;

(5) To covenant (subject to the limitations contained in this article) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) To covenant as to the use, maintenance and replacement of any of or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and to warrant its title to such property;

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in any obligees of the commissions the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default to take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the commission, or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof, and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers herein granted; to make such covenants (other than and in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said commission, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) The commission shall have power by its resolution, trust indenture, mortgage lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any redevelopment project or any part thereof title to which is in the commission, to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any redevelopment project of said commission or any part thereof, title to which is in the commission and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate and maintain such project or any part therefrom and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct; and

(3) To require said commission and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust. (1951, c. 1095, s. 14.)

§ **160-468. Right of obligee.**—An obligee of the commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this article; and

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. (1951, c. 1095, s. 15.)

§ **160-469. Co-operation by public bodies.**—(a) For the purpose of aiding and co-operating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant

easements, licenses or any other rights or privileges therein to a commission;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the redevelopment;

(5) Cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and co-operate in the planning or carrying out of a redevelopment plan;

(b) Any sale, conveyance, or agreement provided for in this section may be made by a public body without public notice, advertisement or public bidding. (1951, c. 1095, s. 16.)

§ **160-470. Grant of funds by community.**—Any municipality located within the area of operation of a commission may appropriate funds to a commission for the purpose of aiding such commission in carrying out any of its powers and functions under this article. To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds. (1951, c. 1095, s. 17.)

Cited in Redevelopment Comm. of Greensboro v. Security Nat. Bank of Greensboro, 252 N. C. 595, 114 S. E. (2d) 688 (1960).

§ **160-471. Records and reports.**—(a) The books and records of a commission shall at all times be open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, shall be filed with the city clerk and shall be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required shall be made. Copies of such reports shall be filed with the mayor and governing body of the municipality. (1951, c. 1095, s. 18.)

§ **160-472. Title of purchaser.**—Any instrument executed by a commission and purporting to convey any right, title or interest in any property under this article shall be conclusive evidence of compliance with the provisions of this article insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. (1951, c. 1095, s. 19.)

§ **160-473. Preparation of general plan by local governing body.**—The governing body of any municipality or county, which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community, is hereby authorized and empowered to prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this article. (1951, c. 1095, s. 20.)

§ **160-474. Inconsistent provisions.**—Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling. (1951, c. 1095, s. 22; 1955, c. 1349; 1957, c. 502, s. 4.)

Editor's Note.—Session Laws 1955, c. 1349, renumbering this section as 160-474.1 and inserting a new section numbered 160-474, was repealed by Session Laws 1957, c. 502, s. 4. Therefore, the inserted section has been deleted and this section has been given its old number.

§ 160-474.1. Certain actions and proceedings of commissions validated.—All actions and proceedings of redevelopment commissions established under the Urban Redevelopment Law (G. S. 160-454 to 160-474) and of the governing bodies of incorporated cities and towns heretofore had and taken pertaining to the calling and holding of public hearings on such redevelopment plans, the giving and publication of notices of such public hearings and the time and manner of such publication are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such public hearings are hereby declared to be valid and lawfully authorized. (1963, c. 194.)

Editor's Note.—The act from which this section is codified became effective April 11, 1963.

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

ARTICLE 38.

Parking Authorities.

§ 160-475. Short title.—This article may be cited as the "Parking Authority Law." (1951, c. 779, s. 1.)

§ 160-476. Definitions.—As used or referred to in this article, unless a different meaning clearly appears from the context:

(1) The term "authority" shall mean a public body and a body corporate and politic organized in accordance with this article for the purposes, with the powers and subject to the restrictions hereinafter set forth;

(2) The term "bonds" shall mean bonds authorized by this article;

(3) The term "city" shall mean the city that is, or is about to be, included in the territorial boundaries of an authority when created hereunder;

(4) The term "city clerk" shall mean the clerk of the city or the officer thereof charged with the duties customarily imposed on the clerk;

(5) The term "city council" shall mean the legislative body, council, board of commissioners, or other body charged with governing the city;

(6) The term "commissioner" shall mean one of the members of an authority, appointed in accordance with the provisions of this article;

(7) The term "parking project" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles;

(8) The term "real property" shall mean lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years, and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate. (1951, c. 779, s. 2.)

§ 160-477. Creation of authority.—The city council of any city may, upon its own initiative, and shall, upon petition of 25 or more residents of the city, hold a public hearing on the question whether or not it is necessary for the city to organize an authority under the provisions of this article. Notice of the time, place and purpose of such hearing shall be given by publication in a newspaper of general circulation in the city, at least once, at least 10 days before such hearing. At such hearing, an opportunity to be heard shall be granted to all residents and taxpayers of the city and all other interested persons. If, after such hearing, the city council shall by resolution determine that it is necessary for the city to organize an authority under the provisions of this article, the city council shall appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present or cause to be presented to the Secretary of State of North Carolina a written application signed by them, which shall set forth

(1) A statement that the city council has, pursuant to this article, and after a public hearing held as herein required, determined that it is necessary for the city to organize an authority under the provisions of this article, and has appointed the signers of such application as commissioners of such an authority;
(2) A statement that the commissioners desire the authority to become a public body and a body corporate and politic under this article;
(3) The name, address and term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location and the principal office of the proposed corporation.

The application shall be accompanied by a copy, certified by the city clerk, of the resolution or resolutions of the city council making such determination and appointments. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by law to take and certify oaths, who shall certify upon the application that he personally knows said commissioners and knows them to be the persons appointed as stated in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and body corporate and politic under the name proposed in the application; and the Secretary of State shall make and issue a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall be coterminous with those of such city.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1951, c. 779, s. 3.)

§ 160-478. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees; duration of authority.—An authority shall consist of five commissioners appointed by the city council, and the city council shall designate the first chairman. No commissioner shall be a city official.

The commissioners who are first appointed shall be designated by the city council to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed by the city council and has qualified. Vacancies shall be filled by the city council for the unexpired term. Three commissioners shall constitute a quorum. A commissioner shall receive no compensation for his services, but he shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may, with the consent of the city council call upon the city attorney or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The city council may remove any member of the authority for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than 10 days' notice.

Such authority and its corporate existence shall continue only for a period of five years and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have otherwise been discharged. Upon its ceasing to exist, all its rights and properties shall pass to the city. (1951, c. 779, s. 4.)

§ **160-479. Duty of authority and commissioners.**—The authority and its commissioners shall be under a statutory duty to comply or cause compliance strictly with all provisions of this article and, in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1951, c. 779, s. 5.)

§ **160-480. Interested commissioners or employees.**—No commissioner or employee of an authority shall acquire any interest direct or indirect in any parking project or in any property included or planned to be included in any parking project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any parking project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any parking project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1951, c. 779, s. 6.)

§ **160-481. Purpose and powers of the authority.**—An authority incorporated under this article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of off-street parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

(1) To sue and be sued;
(2) To have a seal and alter the same at pleasure;
(3) To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;
(4) To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condemnation shall be acquired in the manner provided by law for the condemnation of land by the city;
(5) To make bylaws for the management and regulation of its affairs, and subject to agreements with bondholders, for the regulation of parking projects;
(6) To make contracts and leases, and to execute all instruments necessary or convenient;
(7) To construct such buildings, structures and facilities as may be necessary or convenient;

(8) To construct, reconstruct, improve, maintain and operate parking projects;

(9) To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority;

(10) To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;

(11) To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this article. (1951, c. 779, s. 7.)

Local Modification.—City of Kinston: 1957, c. 860, s. 1.

§ **160-482. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.**—(a) The city may convey, with or without consideration, to the authority real and personal property owned by the city for use by the authority as a parking project or projects or a part thereof. In case of real property so conveyed, the instrument of conveyance shall contain a provision for reversion of the property to the city upon the termination of the corporate existence of the authority or upon the termination of the use of the property for the corporate purpose of the authority. Such conveyance of property by the city to the authority may be made without regard to the provisions of other laws regulating sales of property by the city or requiring previous advertisement of sales of property by the city.

(b) The city may acquire by purchase or condemnation real property in the name of the city for the authority or for the widening of existing roads, streets, parkways, avenues or highways or for new roads, streets, parkways, avenues or highways to any of the parking projects, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by the city. The city may close such streets, roads, parkways, avenues, or highways as may be necessary or convenient.

(c) Contracts may be entered into between the city and the authority providing for the property to be conveyed by the city to the authority, the additional property to be acquired by the city and so conveyed, the streets, roads, parkways, avenues and highways to be closed by the city, and the amounts, terms and conditions of payment to be made by the authority. Such contracts may contain covenants by the city as to the road, streets, parkway, avenue and highway improvements to be made by the city, including provisions for the installation of parking meters in designated streets of the city and for the removal of such parking meters in the event that such parking meters are not found to be necessary or convenient. Any such contract may pledge all or any part of the revenues of such parking meters to the authority for a period of not to exceed the period during which bonds of the authority shall be outstanding; provided, that the total amount of such revenues which may be paid pursuant to such a pledge shall not exceed the total of the principal of and interest on such bonds which become due and payable during such period. Such contracts may also contain provisions limiting or prohibiting the construction and operation by the city or any agency thereof in designated areas of public parking facilities and parking meters whether or not a fee or charge is made therefor. Any such contracts between the city and the authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the contracts or by the terms of the pledge. The city council may authorize such contracts on behalf of the city and no other authorization on the part of the city for such contracts shall be necessary.

(d) The authority may itself acquire real property for a parking project at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by the city.

(e) In case the authority shall acquire any real property which it shall determine is no longer required for a parking project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to convey it without consideration to the city, or, if such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease or otherwise dispose of said real property and shall retain and have the power to use the proceeds of sale, rentals or other moneys derived from the disposition thereof for its purposes. (1951, c. 779, s. 8.)

§ **160-483. Contracts.**—The authority shall let contracts in the manner provided by law for contracts of the city. (1951, c. 779, s. 9.)

§ **160-484. Moneys of the authority.**—All moneys of the authority shall be paid to the treasurer of the city as agent of the authority, who shall designate depositories and who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out on checks of the treasurer on written requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured in the manner provided by law for securing deposits of moneys of the city. The city accountant of the city and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall cause an annual audit of its accounts to be made by a certified public accountant or firm of certified public accountants, and shall cause a copy of the report of each such audit to be filed with the city clerk, who shall present the same to the city council. The authority shall have power, notwithstanding the provisions of this section to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits. (1951, c. 779, s. 10.)

§ **160-485. Bonds of the authority.**—(a) The authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any purpose mentioned in § 160-481, including the acquisition, construction, reconstruction and repair of personal and real property of all kinds deemed by the authority to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the authority necessary or desirable to the financing thereof and placing the project or projects in operation, in the aggregate principal amount of not exceeding three million dollars ($3,000,000.00). The authority shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. In computing the total amount of bonds of the authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchanging for new bonds shall be excluded. Except as may otherwise be expressly provided by the authority, the bonds of every issue shall be general obligations of the authority payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the negotiable instruments law (constituting chapter 25 of the General Statutes) the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the negotiable instruments law, subject only to the provisions of the bonds for registration.

(b) The bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rate or rates, not exceeding six per centum (6%) per annum payable annually or semiannually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption prior to maturity, at par value, as such resolution or resolutions may provide.

(c) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized as to:

(1) Pledging all or any part of the revenues of a parking project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;
(2) The rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;
(3) The setting aside of reserves or sinking funds, and the regulation and disposition thereof;
(4) Limitations on the right of the authority to restrict and regulate the use of a project;
(5) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds;
(6) Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;
(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto; and the manner in which such consent may be given;
(8) Limitations on the amount of moneys derived from a parking project to be expended for operating, administrative or other expenses of the authority;
(9) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 160-493, and limiting or abrogating the right of the bondholders to appoint a trustee under said section or limiting the rights, duties and powers of such trustee;
(10) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

(d) It is the intention hereof that any pledge of revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Statutory provisions relating to the recording or registering of instruments creating liens shall not apply to the lien of any such pledge.

(e) Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The authority shall have power out of any funds available therefor to purchase bonds. The authority shall cancel such bonds.

(g) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in the State of North Carolina. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the construction, maintenance, operation, repair and insurance of the parking project or projects, and the custody, safeguarding and application of all moneys, and may provide that the parking project or projects shall be constructed and paid for under the supervision and approval of consulting engineers. Notwithstanding the provisions of § 160-484, the authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of the project or projects to the trustee under such indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the parking project or projects. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, and the trustee under such trust indenture shall have and possess all of the powers which are conferred by § 160-493 upon a trustee appointed by bondholders. (1951, c. 779, s. 11.)

§ **160-486. Notes of the authority.**—The authority shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates in an amount not exceeding at any time fifty thousand dollars ($50,000.00), over and above the amount of bonds authorized by subsection (a) of § 160-485, whenever the authority shall determine that payment thereof can be made in full from any moneys or revenues which the authority expects to receive from any source. Such notes may, among other things, be issued to provide funds to pay preliminary costs of surveys, plans or other matters relating to any proposed project. The authority may pledge such moneys or revenues (subject to any other pledge thereof) for the payment of the notes and may in addition secure the notes in the same manner and with the same effect as herein provided for bonds. Interest on the notes shall not exceed the rate of six per centum (6%) per annum. The authority shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes, or violation of any of the obligations of the authority to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. (1951, c. 779, s. 12.)

Local Modification.—City of Kinston: 1957, c. 860, s. 2.

§ **160-487. Approval of Local Government Commission; application of Local Government Act.**—The issuance of all bonds and notes authorized pursuant to this article shall be subject to approval by the Local Government Commission and such bonds and notes shall be sold by said Commission in the same manner as bonds and notes of municipalities are approved and sold under the provisions of the Local Government Act. Such bonds and notes shall be delivered in the same manner as bonds and notes of municipalities are delivered under the provisions of the Local Government Act. (1951, c. 779, s. 12½.)

Local Modification.—City of Kinston: 1957, c. 860, s. 3.

§ **160-488. Agreements of the State.**—The State of North Carolina does pledge to and agree with the holders of the bonds that the State will not limit or impair the rights hereby vested in the authority to acquire, construct, maintain, reconstruct and operate the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. (1951, c. 779, s. 13.)

§ **160-489. State and city not liable on bonds.**—The bonds and other obligations of the authority shall not be a debt of the State of North Carolina or of the city, and neither the State nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority. (1951, c. 779, s. 14.)

§ **160-490. Bonds legal investments for public officers and fiduciaries.**—The bonds are hereby made securities in which all public officers and bodies of this State and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business and all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this State and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this State is now or may hereafter be authorized. (1951, c. 779, s. 15.)

§ **160-491. Exemptions from taxation.**—It is hereby found, determined and declared that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of North Carolina, for the improvement of their health, welfare and prosperity, and for the promotion of their traffic, and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the State of North Carolina covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the project or any tolls, revenues or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. (1951, c. 779, s. 16.)

§ **160-492. Tax contract by the State.**—The State of North Carolina covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this article, in consideration of the accceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this article and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation except for transfer and estate taxes. (1951, c. 779, s. 17.)

§ **160-493. Remedies of bondholders.**—(a) In the event that the authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the authority shall fail or refuse to comply with the provisions of this article, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five per centum (25%) in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the register of deeds of the county in which the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of twenty-five per centum (25%) in principal amount of such bonds then outstanding shall, in his or its own name:

(1) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this article;

(2) Bring suit upon such bonds;

(3) By action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;

(4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;

(5) Declare all such bonds due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum (25%) of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

(c) The superior court of the county in which the authority is situated shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders.

(d) Before declaring the principal of all such bonds due and payable, the trustee shall first give 30 days' notice in writing to the authority.

(e) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders, shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with any construction thereon which the authority is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements, and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

(f) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights. (1951, c. 779, s. 18.)

§ **160-494. Actions against the authority.**—In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least 30 days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for 30 days after such presentment. (1951, c. 779, s. 19.)

§ **160-495. Termination of authority.**—Whenever all of the bonds issued by the authority shall have been redeemed or canceled, the authority shall cease to exist and all rights, titles and interests and all obligations and liabilities thereof vested in or possessed by the authority shall thereupon vest in and be possessed by the city. (1951, c. 779, s. 20.)

§ **160-496. Inconsistent provisions in other acts superseded.**—Insofar as the provisions of this article are inconsistent with the provisions of any other act, general or special, the provisions of this article shall be controlling. This article shall not repeal or modify any other act providing a different method of financing parking projects in cities, the powers conferred hereby being intended to be in addition to and not in substitution for the powers conferred by other acts. (1951, c. 799, s. 22.)

ARTICLE 39.

Financing Parking Facilities.

§ **160-497. Declaration of public necessity.**—It is hereby determined and declared that the free circulation of traffic of all kinds through the streets of the municipalities in the State is necessary to the health, safety and general welfare of the public, whether residing in such municipalities or traveling to, through or from such municipalities in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion in the streets of such municipalities; that the parking of motor vehicles in the streets has contributed to this congestion to such an extent as to constitute at the present time a public nuisance; that such parking prevents the free circulation of traffic in, through and from such municipalities, impedes the rapid and effective fighting of fires and disposition of police forces, threatens irreparable loss in values of urban property which can no longer be readily reached by vehicular traffic, and endangers the health, safety and welfare of the general public; that the regulation of traffic on the streets by the installation of parking meters and the imposition of charges in connection with such on-street parking facilities has not relieved this congestion except to a limited extent; that this traffic congestion is not capable of being adequately abated except by provisions for sufficient off-street parking facilities; that adequate off-street parking facilities have not been provided and parking spaces now existing must be forthwith supplemented by off-street parking facilities provided by public undertaking; and that the enactment of the provisions of this article is hereby declared to be a public necessity. (1951, c. 704, s. 1.)

§ **160-498. Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "cost" as applied to parking facilities or to extensions or additions thereto shall include the cost of acquisition, construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interest acquired by

the municipality for such parking facilities or the operation thereof, the cost of demolishing or removing any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during construction and, if deemed advisable by the governing body, for one year after completion of construction, cost of engineering and legal services, plans, specifications, surveys and estimates of cost and of revenues, administrative expense, and such other expense as may be necessary or incident to such acquisition, construction or reconstruction, the financing thereof and the placing of the parking facilities in operation.

(2) The term "governing body" shall mean the board or body in which the general legislative powers of a municipality are vested.

(3) The word "municipality" shall mean any city or town in the State, whether incorporated by special act of the General Assembly or under the general laws of the State, which may desire to finance parking facilities under the provisions of this article.

(4) The words "parking facilities" shall mean and shall include lots, garages, parking terminals or other structures (either single or multi-level and either at, above or below the surface) to be used solely for the off-street parking of motor vehicles, open to public use for a fee, and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or the operation thereof.

(5) The word "revenues" when applied to revenues of the parking facilities shall mean the net revenues derived in any fiscal year from the operation of the parking facilities after paying all expenses of operating, managing and repairing such parking facilities. (1951, c. 704, s. 2.)

§ **160-499. General grant of powers.**—The governing body of any municipality in the State is hereby authorized and empowered:

(1) To acquire, construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and operate parking facilities within the corporate limits of such municipality;

(2) To issue bonds of the municipality as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, equipment, improvement, extension or enlargement;

(3) To establish and revise from time to time and to collect (such collection to be made by the use of parking meters, if deemed desirable by the governing body) rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulations in respect of the use, operation and occupancy of such parking facilities or part thereof;

(4) To accept from any authorized agency of the federal government loans or grants for the planning, construction or acquisition of any parking facilities and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants or contributions may be made;

(5) Subject to any provisions or restrictions which may be set forth in the ordinance authorizing bonds, to acquire in the name of the municipality, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facilities;

(6) To lease all or any part of such parking facilities upon such terms and con-

ditions and for such term of years as it may deem advisable to carry out the provisions of this article;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article, and to employ such engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other employees and agents as it may deem necessary, and to fix their compensation; and

(8) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1951, c. 704, s. 3.)

Cross Reference.—As to authority of city to use revenue from on-street parking meters to finance off-street parking facilities, see also § 160-200, subdivision (31), as amended by Session Laws 1953, c. 171, and the notes thereto and §§ 160-414 and 160-415 and the notes thereto.

Maintenance of Off-Street Parking Facilities Is a Commercial Undertaking.—See Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

On-street parking meters are maintained by a municipality in the exercise of its governmental powers in the regulation of traffic on its streets, and the requirement of the deposit of a coin is in the nature of a tax and is not a fee or toll but simply the method for putting the meter into operation, and the revenue therefrom must be set apart and used for expenses incurred in the regulation and limitation of vehicular traffic on its streets. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See § 160-200, subdivision (31).

City Has No Authority to Rent On-Street Parking Space for a Fee.—Streets of a municipality are provided for public use. A city board has no valid authority to rent, lease or let a parking space on the streets to an individual motorist for a fee, or to charge a rate or toll therefor. Much less may it lease or let the whole system of on-street parking meters for operation by a private corporation or individual. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

On-street and off-street parking facilities may not be combined and operated as one undertaking. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

Nor May City Pledge Revenue from On-Street Meters to Finance Off-Street Facilities.—The "deposits" made in the on-street meters may not be pledged to secure, or be applied to, the payment of the revenue bonds issued to finance off-street parking facilities. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

Sections 160-414 (d) and 160-415 (g), insofar as they purport to authorize a city to pledge revenue derived from on-street parking meters to the payment of revenue bonds to finance off-street parking facilities, are void, and the provisions of this article are to like effect. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952). See, contra, Graham v. Karpark Corp., 194 F. (2d) 616 (1952).

Regulations for Off-Street Meters May Not Be Enforced by Criminal Prosecutions.—The regulations of a municipality for off-street parking meters maintained by it in its proprietary capacity may not be enforced by criminal prosecutions. Britt v. Wilmington, 236 N. C. 446, 73 S. E. (2d) 289 (1952).

§ 160-500. Issuance of bonds.—Subject to the provisions of The Municipal Finance Act of 1921, as amended, subchapter III, chapter 160 of the General Statutes, but notwithstanding any limitation or indebtedness contained therein or in any other law, any municipality may issue its negotiable bonds for the purpose of paying the cost of parking facilities, for the payment of which bonds, there shall be pledged, in addition to the full faith, credit and taxing power of the municipality,

(1) The revenues of such parking facilities,

(2) All the revenues of on-street parking meters collected in each fiscal year following the issuance of all or any part of such bonds (after paying any operating deficit of such parking facilities therewith) until a reserve has been established and is maintained at the close of each fiscal year which shall equal in amount at least ten per centum (10%) of the principal amount of such bonds then outstanding or at least the total amount of principal of and interest on such bonds falling due in the next ensuing fiscal year, whichever is greater, and

(3) The proceeds of special assessments levied as hereinafter provided upon benefited property, except that all or any part of such proceeds may be applied to the payment of notes issued in anticipation of receipt of the proceeds of sale of such bonds, but the amount of such bonds authorized shall be reduced by the amount of such payments.

Such bonds shall mature at such time or times, not exceeding 40 years from their respective dates, and may be subject to such terms of redemption with or without premium, as the governing body may provide, with the approval of the Local Government Commission. The governing body may authorize the purchase and retirement of any such bonds with funds pledged to their payment at market prices not in excess of the redemption value of the bonds so purchased.

Money may be borrowed in anticipation of the receipt of the proceeds of sale of such bonds under the provisions of § 160-375, and notes may be issued therefor as provided in § 160-376.

Bonds and notes issued under the provisions of this article shall be subject to the provisions of the Local Government Act. (1951, c. 704, s. 4.)

Cross Reference.—See annotations under § 160-499.

Editor's Note.—The word "or" in the phrase "limitation or indebtedness" near the beginning of the section was probably intended to be "of", although "or" is the language of the enactment.

§ **160-501. Parking meters.**—The governing body of any municipality in the State is hereby authorized to install parking meters, or cause the same to be installed, at or near the curbs of the streets within the municipality and to adopt such regulations and impose such charges in connection with any parking meters heretofore or hereafter installed as it may deem advisable. The governing body is further authorized to combine into a single project for financing purposes and for the more adequate regulation of traffic and relief of congestion such parking meters or any portion thereof with any parking facilities financed by bonds issued under the provisions of this article and to pledge to the payment of such bonds, as provided in § 160-500, the revenues derived from such parking meters. (1951, c. 704, s. 5.)

Cross Reference.—See note to § 160-499.

Cited in State v. Scoggin, 236 N. C. 1, 72 S. E. (2d) 97 (1952).

§ **160-502. Pledge of revenues.**—The revenues derived from any parking facilities for which bonds shall be issued under the provisions of this article shall be pledged to the payment of the principal of and the interest on such bonds. Subject to the provisions of § 160-500, the governing body shall also pledge to the payment of such principal and interest the revenues derived from on-street parking meters, and all or any part of the special assessments levied as hereinafter provided upon benefited property. (1951, c. 704, s. 6.)

Cross Reference.—See note to § 160-499.

§ **160-503. Authorizing ordinance.**—Any ordinance authorizing the issuance of bonds under the provisions of this article shall contain the following matters, in addition to all other matters required to be stated therein by The Municipal Finance Act:

(1) A statement that the revenues of on-street parking meters shall be pledged to the payment of such bonds as provided in this article; and

(2) A statement that special assessments shall be levied on benefited property, giving a description of the property which is to be specially benefited and is to be assessed, the basis of assessment, the proportion of the cost to be specially assessed, and the number of equal annual installments in which assessments may be paid. Such installments shall be not less than five nor more than twenty. (1951, c. 704, s. 7.)

Cross Reference.—See note to § 160-499.

§ 160-504. Special assessments.—Any municipality in the State shall have power, through its governing body, upon petition made as herein provided, to provide for the levy of special assessments on benefited property.

(1) The Petition.—A petition shall be submitted to the governing body of any municipality in the State requesting such governing body to issue bonds for the purpose of paying the cost of parking facilities. Such petition shall

a. Designate by a brief description the parking facilties proposed;

b. Request that the same be provided as authorized by this article;

c. Set forth a description of the property which is to be specifically benefited and is to be assessed;

d. Request that such proportion of the cost of such parking facilities as may be specified in the petition be specially assessed against the property in the benefited area;

e. Set forth the basis on which such assessments shall be assessed, whether by lineal feet of frontage on streets in the benefited area, by square feet of floor space on property fronting on streets in the benefited area, or by some other fair basis as determined upon by the petitioners.

The petition shall be signed by at least a majority in number of the owners of property in the benefited area, who must represent at least a majority of the lineal feet of frontage, square feet of floor space, or other basis on which the assessments shall be assessed. For the purpose of the petition, all the owners of undivided interests in any land shall be deemed and treated as one person and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interests: Provided, that for the purpose of this section the word "owners" shall be considered to mean the owners of any life estate, of an estate by entirety, or of the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lien holders, or persons having inchoate rights of curtesy or dower. Upon the filing of such petition with the municipality, the clerk, or other person designated by the governing body thereof, shall investigate the sufficiency of the petition, and if it is found to be sufficient, he shall certify the same to the governing body.

(2) The Preliminary Resolution.—Upon the finding by the governing body that the petition provided for in the preceding subdivision is sufficient, the governing body shall adopt a resolution which shall contain substantially the following:

a. That a sufficient petition has been filed requesting the issuance of bonds for the purpose of paying the cost of parking facilities;

b. A brief description of the proposed parking facilities;

c. A description of the property to be specially benefited and assessed, the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid;

d. A notice of the time and place, when and where a public hearing will be held to hear the objections of all interested persons to (i) the proposed parking facilities, (ii) the property which is to be specially benefited and assessed, (iii) the proportion of the cost of the parking facilities to be specially assessed, (iv) the basis of assessment, and (v) the number of equal annual installments in which the assessments may be paid, which notice shall state that a petition has been filed requesting the issuance of bonds for the purpose of paying the costs of the parking facilities, shall contain a brief description of the proposed parking facilities and a description of the property to be specially benefited and assessed, shall show the proportion of the cost of the parking facilities to be specially assessed, the basis of assessment, and the number of equal annual installments in which the assessments may be paid, and such notice shall also state that all objections shall be made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time of such hearing, and that any such objections not so made will be waived.

Said notice shall be published one time in a newspaper published in the municipality, or if there be no such newspaper, such notice shall be posted in three public places in the municipality for at least five days, the date of publication or posting of the notice to be not less than ten days prior to the date fixed for the hearing.

(3) Public Hearing on Preliminary Resolution.—At the time for the public hearing, or at some subsequent time to which such hearing shall be adjourned, the governing body shall consider such objections as have been made in compliance with subdivision (2) d above. Any objection not made in writing, signed in person or by attorney, and filed with the clerk of the municipality at or before the time or adjourned time of such hearing shall be considered as waived; and if any such objection shall be made and shall not be sustained by the governing body, the adoption of the ordinance as provided in the next following subdivision, shall be the final adjudication of the issues presented, unless an action or proceeding is commenced to set aside the ordinance or to obtain other relief upon the ground that the ordinance is invalid as provided by § 160-385.

(4) Authorizing Ordinance.—The governing body shall thereafter determine in its discretion whether or not to proceed with the acquisition or construction of such parking facilities, and if it decides to proceed, it shall then adopt a bond ordinance in accordance with the provisions of § 160-503.

(5) Amount of Assessment Ascertained.—Upon the completion of the proposed parking facilities the governing body shall compute and ascertain the total cost thereof. The governing body must thereupon make an assessment in accordance with the terms of the bond ordinance, and for that purpose must make out an assessment roll in which must be entered the names of the persons assessed as far as they can ascertain the same, and the amount assessed against them, respectively, with a brief description of the lots or parcels of land assessed.

(6) Filing of Assessment Roll; Publication of Notice of Hearing Thereon.—After such assessment roll has been completed, the governing body of the municipality shall cause it to be filed in the office of the clerk of the municipality for inspection by parties interested, and shall cause to be published one time, in some newspaper published in the municipality, or if there be no such newspaper the governing body shall cause to be posted in three public places in the municipality, a notice of the completion of the assessment roll, setting forth a description in general terms of the parking facilities, and stating the time fixed for the meeting of the governing body for the hearing of objections to the special assessments, such meeting to be not earlier than 10 days after the first publication or from the date of posting of said notice. The governing body shall publish in said notice the amount of each assessment.

(7) Hearing, Revision; Confirmation; Lien.—At the time appointed for that purpose or at some other time to which it may adjourn, the governing body of the municipality shall hear the objections to the assessment roll of all persons interested, who may appear and offer proof in relation

thereto. Then or thereafter, the governing body shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which said governing body decides each of said lots or parcels has received or will receive on account of such parking facilities. If any property which may be chargeable under this article shall have been omitted from said roll or if the prima facie assessment has not been made against it, the governing body may place on said roll an apportionment to said property. The governing body may thereupon confirm said roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the governing body shall confirm an assessment for parking facilities, the clerk of the municipality shall enter on the minutes of the governing body and on the assessment roll, the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the property against which the same are assessed of the same nature and to the same extent as county and city or town taxes and superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same shall be delivered to the tax collector of the municipality.

(8) Appeal to Superior Court.—If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of such assessment he may, within 10 days after the confirmation of the assessment roll, give written notice to the mayor or clerk of the municipality that he takes an appeal to the superior court of the county wherein such municipality is situated, in which case he shall within 20 days after the confirmation of the assessment roll serve on said mayor or clerk a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he is the owner or in which he is interested shall be exclusive.

(9) Power to Adjust Assessments.—The governing body may correct, cancel or remit any assessment for parking facilities, and may remit, cancel or adjust the interest or penalties on any such assessment. The governing body has the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. The proceeding shall be in all respects as in the case of original assessment, and the reassessment shall have the same force as if it had originally been properly made.

(10) Payment of Assessment in Cash or by Installments.—The property owner against whom an assessment is made shall have the option and privilege of paying the assessment in cash, or if he should so elect and give notice of the fact in writing to the municipality within 30 days after the confirmation of the assessment roll, he shall have the option and privilege of paying the assessments in installments as may have been determined by the governing body in the bond ordinance. Such installments shall bear interest at the rate of six per cent (6%) per annum from the date of the confirmation of the assessment roll, and in case of the failure or neglect of any property owner to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall at once become due and payable and such

property shall be sold by the municipality under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. The whole assessment may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

(11) Payment of Assessment Enforced.—After the expiration of 20 days from the confirmation of an assessment roll the tax collector or such other officer of the municipality as the governing body may direct so to do shall cause to be published in a newspaper published in the municipality, or if there be no such newspaper, shall cause to be posted in at least three public places therein, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid to him at any time before the expiration of 30 days from the first publication of the notice without any addition. In the event the assessment is not paid within such time, it shall bear interest at the rate of six per cent (6%) per annum from the date of confirmation of the assessment roll. The assessment shall be due and payable on the date on which taxes are payable; provided, that where an assessment is divided into installments one installment shall become due and payable each year on the date on which taxes are due and payable. After default in the payment of any installment, the governing body may, on the payment of all installments in arrears, together with interest due thereon and on reimbursement of any expenses incurred in attempting to obtain payment, reinstate the remaining unpaid installments of such assessment so that they shall become due in the same manner as they would have if there had been no default, and such extension may be granted at any time prior to the institution of an action to foreclose.

(12) Sale or Foreclosure for Unpaid Assessments Barred in 10 Years; No Penalties.—No statute of limitation, whether fixed by law especially referred to in this article or otherwise, shall bar the right of the municipality to enforce any remedy provided by law for the collection of unpaid assessments, save from and after 10 years from default in the payment thereof, or if payable in installments, 10 years from the default in the payment of any installment. No penalties prescribed for failure to pay taxes shall apply to special assessments, but they shall bear interest at the rate of six per cent (6%) per annum only. In any action to foreclose a special assessment the costs shall be taxed as in any other civil action, and shall include an allowance for the commissioner appointed to make the sale, which shall not be more than five per cent (5%) of the amount for which the land is sold, and one reasonable attorney's fee for the plaintiff.

(13) Assessments in Case of Tenant for Life or Years.—Whenever any real estate or portion thereof is in the possession or enjoyment of a tenant for life, or a tenant for a term of years, and an assessment is laid or levied on said property, the amount so assessed for such purposes, or a portion of the amount so assessed in case only a portion of the real estate is so possessed, shall be paid by the tenant for life or for years, and the remaindermen after the life estate, or the owner in fee after the expiration of tenancy for a term of years, pro rata their respective interests in said real estate.

The respective interests of a tenant for life and the remainderman in fee shall be calculated as provided in § 37-13 of the General Statutes.

If the assessment, after same shall be laid or levied, shall all be paid by either the tenant for life or the tenant for a term of years, or by the remainderman, or the owner in fee, the party paying more than his pro rata share of the same shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of such assessment, with interest thereon from the date of such payment, and be subrogated to the right of the municipality to a lien on such property for the same.

Any one of several tenants in common, or joint tenants, or copartners, shall have the right to pay the whole or any part of the special assessments assessed or due upon the real estate held jointly or in common, and all sums by him so paid in excess of his share of such special assessments, interest, costs and amounts required for redemption, shall constitute a lien upon the shares of his cotenant or associates, payment whereof, with interest and costs, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding: Provided, the lien provided for in this paragraph shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of the superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in such clerk's office.

(14) Apportionment of Assessments.—When any special assessment has been made against any property as authorized by this article, and it is desirable that said assessment be apportioned among subdivisions of said property, the governing body of the municipality shall have authority, upon petition of the owner of said property, to apportion said assessment fairly among said subdivisions. Thereafter, each of said subdivisions shall be relieved of any part of such original assessment except the part thereof apportioned to said subdivision; and the part of said original assessment apportioned to any such subdivision shall be of the same force and effect as the original assessment.

(15) No Change of Ownership Affects Proceedings.—No change of ownership of any property or interest therein after the passage of the bond ordinance authorized by this article shall in any manner affect subsequent proceedings, and the parking facilities may be completed and assessments made therefor as if there had been no change in such ownership.

(16) Lands Subject to Assessment.—No lands in the municipality shall be exempt from special assessment as provided in this article except lands belonging to the United States and except as provided in § 160-505; and the governing bodies of municipalities and the officers, trustees or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any parking facilities authorized by this article.

(17) Proceedings in Rem.—All proceedings for special assessment under the provisions of this article shall be regarded as proceedings in rem, and no mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission. (1951, c. 704, s. 8.)

§ **160-505. Exemption of property from taxation.**—As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this article to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this article constitute public property and are used for municipal purposes, no municipality shall be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provision of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State. (1951, c. 704, s. 9.)

§ **160-506. Alternative method.**—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local. (1951, c. 704, s. 10.)

§ **160-507. Liberal construction.**—The provisions of this article, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof. (1951, c. 704, s. 11.)

SUBCHAPTER IX. PHOTOGRAPHIC REPRODUCTION OF RECORDS.

Article 40.

Photographic Reproduction of Records.

§ **160-508. Municipalities brought under terms of county act.**—All cities and towns shall be subject to, governed by, and have the authority granted to counties in, the provisions of article 2A of chapter 153 of the General Statutes (G. S. 153-15.1 and 153-15.6) and acts amendatory thereof and supplemental thereto, including acts ratified at the 1955 Session of the General Assembly, except as herein otherwise provided or except as the context shows that it is not intended that such acts shall be applicable to cities and towns. (1955, c. 451.)

§ **160-509. Terms in county act made applicable to cities and towns.**—Except as the context may otherwise show, and for the purpose of applying the provisions of the county act, and acts amendatory thereof and supplemental thereto, cities and towns, wherever a county official is designated by title it shall mean any official of a city or town, the term, governing body of any city or town, shall take the place of the term, board of county commissioners, and the term, city or town shall take the place of the term, county. (1955, c. 451.)

Chapter 161.

Register of Deeds.

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ARTICLE 1.

The Office.

§ **161-1. Election and term of office.**—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, a register of deeds. (Const., art. 7, s. 1; Rev., s. 2650; C. S., s. 3543.)

Cross Reference.—As to time of election, see § 163-4.

Legislature May Change Duties and Emolument.—The office of register of deeds is constitutional, but the duties are statutory, and the legislature may, within reasonable limits, change the duties and diminish the emoluments of the office, if the public welfare requires it to be done. Fortune v. Commissioners, 140 N. C. 322, 52 S. E. 950 (1905).

§ **161-2. Four-year term for registers of deeds; counties excepted.**—At the general election for the year one thousand nine hundred and thirty-six and quadrennially thereafter there shall be elected in each county of this State by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Beaufort, Cherokee, Clay, Dare, Davidson, Halifax, Haywood, Hyde, Iredell, Jackson, Johnston, Lincoln, Macon, Mitchell, Moore, Orange, Rowan, Swain, Vance and Yadkin counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192; 1949, cc. 756, 830; 1957, c. 1022, s. 2.)

Editor's Note.—The 1937 amendment struck out Stanly from the list of excepted counties; the 1939 amendments struck out Alleghany and Washington; the 1941 amendment struck out Transylvania; the 1949 amendments struck out Bladen and Harnett; and the 1957 amendment struck out Avery.

§ **161-3. Oath of office.**—The register of deeds shall take the oath of office on the first Monday of December next after his election, before the board of county commissioners. (1868, c. 35, s. 2; 1876-7, c. 276, s. 5; Code, s. 3647; Rev., s. 2652; C. S., s. 3544.)

Cross Reference.—As to form of oath, see § 11-11.

§ **161-4. Bond required.**—Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum not exceeding ten thousand dollars, payable to the State, and conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of his office. (1868, c. 35, s. 3; 1876-7, c. 276, s. 5; Code, s. 3648; 1899, c. 54, s. 52; Rev., s. 301; C. S., s. 3545; 1963, c. 204.)

Local Modification.—Dare: 1907, c. 75; Nash: 1955, c. 690.

Cross References.—As to induction into office and necessity of approval of bond by county commissioners, see § 153-9, subdivision (11). As to power of county commissioners to fill vacancy, see § 153-9, subdivision (12). As to action on official bonds, see § 109-34 et seq. As to penalty for issuing marriage license unlawfully, see § 51-17.

Editor's Note.—The 1963 amendment deleted the former provision as to renewal of bond.

Office Vacated unless Bond Given.—The board of commissioners may declare the office vacant for failure of the register to give a sufficient bond. State v. Patterson, 97 N. C. 360, 2 S. E. 262 (1887).

All Official Acts Included in Duties of Office.—The words "and faithfully discharge the duties of his office," in the bond of a register of deeds, do not refer alone to the safekeeping of the "records and books," but to all other official acts, the nonperformance of which results in injury. State v. Young, 106 N. C. 567, 10 S. E. 1019 (1890).

Breach of Bond.—As to failure to register instrument as breach of bond, see § 161-14. As to failure to index and cross-index. see § 161-22.

§ **161-5. Vacancy in office.**—When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. (1868, c. 35, s. 4; Code, s. 3649; Rev., s. 2651; C. S., s. 3546.)

Cross Reference.—As to authority of county commissioners to fill vacancy, see § 153-9, subdivision (12).

Office Declared Vacated.—The county commissioners may appoint a successor to the office of register of deeds where they have declared the office vacant by reason of the incumbent's failure to give a sufficient bond. State v. Patterson, 97 N. C. 360, 2 S. E. 262 (1887).

§ **161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds.**—The registers of deeds of the several counties are hereby authorized to appoint one or more assistant registers of deeds and one or more deputy registers of deeds, whose acts as assistants or deputies shall be valid and for which the registers of deeds shall be officially responsible. The certificate of appointment of an assistant or deputy shall be filed by the appointing register of deeds in the office of the clerk of the superior court, who shall record the same.

Each assistant and deputy register of deeds so appointed shall be authorized, in addition to his other powers and duties, to register and sign instruments and documents in the name and under the title of the appointing register of deeds, by himself as assistant or deputy, as appropriate. Such signing shall be substantially as follows:

John Doe, Register of Deeds
by Richard Roe, Assistant (or Deputy, as appropriate).

Such registering and signing, when regular and sufficient in all other respects, shall be valid for all purposes, and of the same force and effect as if the instrument or document had been registered and signed by the register of deeds personally.

Wherever in the General Statutes reference is made to "the register of deeds and (or) his assistant" or "the register of deeds and (or) his deputy" or words substantially to this effect, or reference is made only to "the assistant register of deeds" or "the deputy register of deeds," such reference to either assistant or deputy, unless the contrary intent is specifically stated in the text, shall also include the other, insofar as such reference pertains to the authority, powers, duties, rights, privileges, or qualifications for office of assistant or deputy register of deeds. (1909, c. 628, s. 1; C. S., s. 3547; 1949, c. 261; 1959, c. 279; 1963, c. 191.)

Local Modification.—Dare: 1907, c. 393; Durham: 1909, c. 91; Person: 1909, c. 546.

Editor's Note.—The 1949 amendment added the former second and third paragraphs. For brief comment on the 1949 amendment, see 27 N. C. Law Rev. 476.

The 1959 amendment rewrote the former second paragraph.

The 1963 amendment rewrote the section.

§ **161-7. Office at courthouse.**—The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable. (1868, c. 35, s. 5; Code, s. 3650; Rev., s. 2653; C. S., s. 3548.)

§ **161-8. Attendance at office.**—The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly. (1868, c. 35, s. 6; Code, s. 3651; Rev., s. 2654; C. S., s. 3549.)

Free Abstracts Not Required.—While it is the duty of the register of deeds to permit all persons to inspect the records committed to his custody, he will not be required, without the payment of his proper fees, to allow anyone to make copies or abstracts therefrom. Newton v. Fisher, 98 N. C. 20, 3 S. E. 822 (1887).

§ **161-9. Official seal.**—The office of register of deeds for every county in the State shall have and use an official seal, which seal shall be provided by the county commissioners of the several counties, and shall be of the same size and design as the seals now used by the clerk of the superior court, with the words "Office of Register of Deeds," the name of the county and the letters "North Carolina" surrounding the figures. (1893, c. 119, s. 1; Rev., s. 2649; C. S., s. 3550.)

§ **161-10. Fees of register of deeds.**—The register of deeds shall be allowed, while and when acting as clerk to the board of commissioners, such per diem as such board may respectively allow, not exceeding two dollars; and shall be allowed the following fees for his services as register of deeds:

For registering any deed or other writing authorized to be registered by them, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, eighty cents; and for every additional copy-sheet, ten cents.

Registering chattel mortgage, statutory form, twenty cents.

For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing, one dollar.

For a copy of any record or any paper in their offices, like fees as for registering the same.

For issuing each notice required by the county commissioners, including subpoenas for witnesses, fifteen cents. This shall not include county orders on the treasury.

Recording and issuing each order of commissioners, ten cents. Where a standing order is made for the payment of money, monthly or otherwise, there shall be charged but one fee therefor.

Making out original tax list, two cents for each name thereon; for each name on each copy required to be made, two cents.

Issuing marriage license, one dollar.

For transcript and certificate of limited partnership, fifty cents.

For recording the election returns from the various voting precincts, ten cents per copy-sheet, to be paid by the county.

For attaching and indexing subdivisions or plats now allowed by law to be registered, fifty cents; for transcribing and indexing subdivisions and plats, seventy-five cents. If such subdivision or plat contains more than three lots or tracts of land, the register of deeds shall be entitled to charge twenty-five cents for transcribing each and every lot or tract of land in excess of three that is contained in such plat or subdivision, but in no case shall the fees exceed five dollars for transcribing and indexing such plat or subdivision. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2, c. 247, s. 3, cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C. S., s. 3906.)

Local Modification.—Beaufort: 1949, c. 368, s 3; Cabarrus: 1945, c. 880, s. 3; Chowan: 1947, c. 490; Gaston: 1951, c. 868; Guilford: 1949, c. 602; Hertford: 1955, c. 619; Iredell: 1959, c. 654; Jones: 1961, c. 569; McDowell: 1953, c. 728; Pender: 1945, c. 430; Perquimans: 1949, c. 664; 1953, c. 660; 1955, c. 108; Richmond: 1951, c. 529.

§ 161-10.1. Local variations as to fees of registers of deeds.—The register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, fifty cents in the counties of Davidson, Halifax, Northampton, Union, Vance, Warren and Wayne; thirty cents in the counties of Alamance, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Carteret, Caswell, Catawba, Chowan, Cumberland, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Granville, Harnett, Hertford, Jones, Lenoir, Lincoln, McDowell, Martin, Moore, New Hanover, Onslow, Pamlico, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Washington, Watauga and Wilson; twenty cents in the counties of Chatham, Cleveland, Columbus, Iredell, Johnston and Mecklenburg (Rev., s. 2776; 1907, cc. 421, 636, 717; 1909, cc. 23, 532; P. L. 1913, c. 49; P. L. 1917, c. 182; C. S., s. 3907; 1933, c. 48.)

In Alexander County the board of county commissioners are authorized and empowered to pay the register of deeds the sum of one cent each per name for indexing births and deaths in said county. Likewise in Cleveland County. (P. L. 1915, c. 513; P. L. 1917, c. 423; C. S., s. 3907.)

In Carteret County the register of deeds shall receive in addition to all other fees now allowed by law for recording instruments authorized to be registered, the sum of ten cents (.10) per name for each name in excess of five, for cross-indexing such names which appear on all instruments presented at his office and recorded therein. (1943, c. 289.)

In Catawba County the register of deeds shall be allowed as a fee for his services for registering any deed of trust, in which real property is conveyed to a trustee to secure a loan from a building and loan association, the sum of eighty cents. (1909, c. 43; C. S., s. 3907.)

In Forsyth County the register shall receive for registering any deed or other writing authorized to be registered, with certificate of probate or acknowledgment and private examination of a married woman, containing not more than three copy-sheets, sixty-five cents; and for every additional copy-sheet, ten cents: Provided, that the registration of any deed of trust shall not cost more than one dollar and ten cents, where the same does not contain more than four copy-sheets, and for every additional copy-sheet, ten cents each. (Rev., s. 2776; P. L. 1913, c. 626; P. L. Ex. Sess. 1913, c. 177; C. S., s. 3907.)

In Gates County the register of deeds shall receive for canceling of a mortgage or deed of trust, ten cents. (P. L. 1919, c. 4; C. S., s. 3907.)

In Jackson County the register shall, for his service in acting as clerk of the board of commissioners, for recording minutes, and doing other clerical work for or under the direction of the board of commissioners, receive three dollars per day, to be paid by the county. (P. L. 1913, c. 182; C. S., s. 3907.)

In Lenoir County the register of deeds shall receive a fee of one dollar ($1.00) for preparing and certifying a copy of any marriage license. (1961, c. 328.)

In Macon County, the register of deeds shall receive the following fees: For recording form deeds, quitclaim deeds, and right-of-way agreements, two dollars and fifty cents ($2.50); for recording each warranty deed, deed of trust, judgment and decree, two dollars and fifty cents ($2.50) for the first three hundred (300) words, and thirty cents (30¢) for each two hundred (200) words or fraction thereof in addition to the first three hundred (300) words; for recording each form deed of trust, three dollars ($3.00); for recording each form chattel mortgage, one dollar ($1.00); for recording each form crop lien contract, one dollar and fifty cents ($1.50); for furnishing certified copies of birth records, or death certificates, fifty cents (50¢) per copy; for issuing marriage licenses, five dollars ($5.00); for furnishing certified copies of marriage licenses, one dollar ($1.00); for recording maps, when photostated, five dollars ($5.00). (1963, c. 466.)

In Pamlico County the register of deeds shall receive the following fees: For recording chattel mortgage, statutory form, forty cents (40¢); for recording each warranty deed, mortgage deed, deed of trust, contract or other instrument relating to real estate, the sum of one dollar ($1.00) for the first 300 words thereof, and fifteen cents (15¢) for each 100 additional words or fraction thereof. (1951, c. 40, s. 3.)

In Pender County the register of deeds shall be allowed the sum of fifty cents (50¢) for his services in registering any crop lien. (1945, c. 432.)

In Randolph County the register of deeds shall be allowed the sum of eighty cents (80¢) for registering chattel mortgages, statutory form. (1951, c. 133, s. 5; 1955, c. 556, s. 7.)

In Richmond County the register of deeds shall receive for registering short form of lien bond, or lien bond and chattel mortgage combined, seventy-five cents (75¢). (1951, c. 529.)

In Tyrrell County the register shall receive for canceling mortgages, deeds of trust or instruments intended to secure the payment of money, fifteen cents. (1909, c. 780; C. S., s. 3907.)

In Union County the county commissioners may revise the fees and commissions which may be charged by the register of deeds, and may fix all such fees and commissions at such amounts and rates as in their judgment will give the register of deeds and his deputies and assistants reasonable compensation. The fees and commissions so fixed shall be the legal fees chargeable by and payable to the register of deeds. (P. L. 1917, c. 366; C. S., s. 3907.)

In Wake County the register of deeds shall charge and receive the following fees for registration of the papers herein mentioned, to wit: For registering lien bond, fifty cents; for registering short form of chattel mortgage provided for securing a sum not exceeding three hundred dollars, thirty cents; for registering short form of agricultural lien and chattel mortgage for advances, thirty cents; for registering short form of crop lien to secure advances and chattel mortgage to secure pre-existing debt, and to give additional security to the lien, thirty cents; for registering short-form notes given for the purchase price of personal property or combining also a conveyance of the property or other additional property as security, and retaining title to the property sold, twenty cents. (P. L. 1915, c. 138; C. S., s. 3907.)

In Yadkin County the fees for recording chattel mortgages, crop liens, conditional sales, etc., shall be twenty cents for the first two copy-sheets or fraction thereof and ten cents for each additional copy-sheet or fraction thereof. (P. L. 1911, c. 414; C. S., s. 3907.)

In Yancey County the register of deeds shall receive the following fees: For recording each warranty deed, mortgage deed, deed of trust, lease or contract, the sum of one dollar ($1.00) for the first three hundred words, and the sum of twenty cents (20¢) for each one hundred additional words or fraction thereof; ten cents (10¢) per name for indexing and cross-indexing each warranty deed, mortgage deed, deed of trust, lease or contract; the sum of fifty cents (50¢) for recording, indexing and cross-indexing each chattel mortgage; the sum of ten cents (10¢) for recording and indexing each certificate of birth, marriage or death. (1945, c. 544.)

Local Modification.—Alamance: Pub. Loc. 1921, c. 234, s. 2; Alleghany: Pub. Loc. 1927, c. 175, s. 3½; Ashe: Pub. Loc. 1927, c. 372, s. 2; Avery: Pub. Loc. 1927, c. 612; Beaufort: Pub. Loc. 1921, c. 229, s. 3; Brunswick: Pub. Loc. 1921, c. 436, s. 3; Burke: Pub. Loc. 1937, c. 564; Catawba: Pub. Loc. 1921, c. 47, s. 2; 1939, c. 33; Cherokee: Pub. Loc. 1921, c. 523, s. 3; Chowan: Pub. Loc. Ex. Sess. 1920, c. 63; Cleveland: Pub. Loc. 1921, c. 75; Columbus: Pub. Loc. 1921, c. 77, s. 6; c. 350, s. 6; Craven: Pub. Loc. 1921, c. 461, s. 3; 1941, c. 68; Cumberland: Pub. Loc. 1927, c. 172, s. 1; Pub. Loc. 1931, c. 523; Davidson: Pub. Loc. 1921, c. 421, s. 2; Davie: Pub. Loc. 1921, c. 84, s. 9; Durham: Pub. Loc. 1921, c. 46, s. 4; Forsyth: Pub. Loc. 1921, c. 69, s. 1; Franklin: Pub. Loc. 1921, c. 45; Gaston: 1951, c. 868; Gates: Pub. Loc. 1927, c. 177; Pub. Loc. 1933, c. 237, s. 3; Graham: Pub. Loc. 1921, c. 453; Pub. Loc. 1927, c. 475; Pub. Loc. 1931, c. 28, s. 3; Halifax: Pub. Loc. 1921, c. 519, s. 1; Henderson: Pub. Loc. 1921, c. 189, s. 1; Pub. Loc. 1927, c. 528; Iredell: 1959, c. 654; Jones: 1961, c. 569; Lee: Pub. Loc. Ex. Sess. 1920, c. 164; Lincoln: Pub. Loc. 1921, c. 122, s. 1; Macon: Pub. Loc. 1921, c. 145; Madison: Pub. Loc. 1921, c. 151, s. 2; Martin: Pub. Loc. Ex. Sess. 1921, c. 250; Pub. Loc. 1927, c. 415; Mitchell: Pub Loc. 1927, c. 516; Pub. Loc. 1935, c. 93; 1943, c. 364; Montgomery: 1937, c. 137; New Hanover: Pub. Loc. 1921, cc. 95, 442; Pub. Loc. 1927, c. 390; Northampton: 1931, c. 11, s. 2; Pasquotank: Pub. Loc. 1921, c. 320, s. 2; Pub. Loc. 1927, c. 518; Perquimans: Pub. Loc. 1921, c. 152; 1949, c. 664; 1953, c. 660; 1955, c. 108; Person: Pub. Loc. 1921, c. 577; Pitt: Pub. Loc. 1927, c. 255; c. 597, s. 2; Polk: 1925, c. 44; Robeson: Pub. Loc. 1921, c. 37; Rockingham: Pub. Loc. Ex. Sess. 1921, c. 108; Rutherford: Pub. Loc. 1921, c. 443, s. 4; Stokes: Pub. Loc. 1921, c. 285, s. 7; Pub. Loc. 1927, c. 569, s. 2; Swain: Pub. Loc 1921, c. 422; 1943, c. 456; Transylvania: Pub. Loc. 1933, c. 386, s. 10; Union: Pub. Loc. 1921, c. 75; Wake: Pub. Loc. 1921, c. 190; Warren: Pub. Loc. 1921, c. 294, s. 2; Wayne: Pub. Loc. 1939, c. 118; Wilkes: Pub. Loc. 1927, cc. 406, 547.

Editor's Note.—The 1943 amendment added the paragraph relating to Richmond County. By virtue of the amendment Richmond has been stricken from the second list of counties appearing in the first paragraph.

The 1955 amendment repealed the former paragraph relating to Randolph County and inserted another paragraph with the same wording.

The 1961 amendment added the paragraph relating to Lenoir County.

The 1963 amendment added the paragraph relating to Macon County.

§ **161-11. Fees for issuing certificates of encumbrances.**—The fee charged by the register of deeds for preparing and issuing a certificate of encumbrance as required for federal chattel mortgages and/or crop liens shall be limited to fifty (50¢) cents for each such certificate. (1933, c. 437.)

ARTICLE 2.

The Duties.

§ **161-12. Apply to clerk for instruments for registration.**—The register of deeds shall at least once a week apply to the clerk of the superior court of his county for all instruments of writing admitted to probate, and then remaining in the office of such clerk for registration, and also for all fees for registration due thereon; which fees the clerk of the superior court shall receive for the register. (1868, c. 35, s. 7; Code, s. 3652; Rev., s. 2655; C. S., s. 3551.)

§ **161-13. Failure of clerk to deliver papers.**—In case the clerk fails to deliver such instruments of writing, and pay over such fees as are prescribed in § 161-12, on application of the register, the clerk shall forfeit and pay to the register one hundred dollars for every such failure; for which sum judgment may be entered at any time by the judge of the superior court, on motion in behalf of the register, on a notice of ten days thereof to the clerk. (1868, c. 35, s. 8; Code, s. 3653; Rev., s. 2656; C. S., s. 3552.)

§ **161-14. Registration of instruments.**—The register of deeds shall register all instruments in writing delivered to him for registration forthwith. He shall indorse on each instrument in writing the day and hour on which it is presented to him for registration, and such indorsement shall be entered on his books and form a part of the registration, and he shall, immediately upon making the indorsement herein required upon each instrument in writing, index and cross-index the same in the order of time in which such instruments are presented to him: Provided, that the register of deeds may, if in his opinion it is proper to do so, prepare and use in lieu of his permanent index a temporary index until the instrument is actually recorded, upon which all instruments shall be indexed immediately upon receipt of same into his office, and until said instruments shall have been recorded the temporary index shall operate in all respects as the permanent index. In the event the register of deeds shall use a temporary index, however, all instruments shall be recorded and cross-indexed on the permanent index within thirty (30) days from date of receipt of same. (R. C., c. 37, s. 23; 1868, c. 35, s. 9; Code, s. 3654; Rev., s. 2658; C. S., s. 3553; 1921, c. 114.)

Cross References.—As to requisites and formalities of the registration of deeds and mortgages, generally, see § 47-17 et seq. As to indexing of instruments, see also §§ 161-21, 161-22.

Editor's Note.—Prior to the 1921 amendment twenty days were allowed for the registration of all instruments except mortgages and deeds of trust, it was not required that the hour of filing be endorsed on the instrument, and there was no provision for a temporary index.

Session Laws 1945, c. 649, requires register of deeds of Pamlico County to show fees collected on recorded papers and to keep records of same.

Section Means Complete Registration.—This section means a registration complete and perfect, so that it may serve all the purposes of the law in protecting the rights of parties directly interested, and give notice truly to the public. State v. Young, 106 N. C. 567, 10 S. E. 1019 (1890).

Indexing and Cross-Indexing Essential to Proper Registration.—See note to § 161-22.

Failure to Register Breach of Bond.—Failure of the register of deeds to register written instruments properly presented is a breach of the bond required by § 161-4. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

Filing Has Effect of Registration.—The filing for registration is in law registration, and all rights and liabilities accrue from the date of filing and do not depend upon the greater or lesser diligence of the register in performing his duty. Glanton v. Jacobs, 117 N. C. 427, 23 S. E. 335 (1895).

Delivery to Proper Officer Necessary to Filing.—Where the filing of a paper in the office of the register of deeds is necessary to the title to lands, the time thereof will be considered as that at which the paper was delivered to and received by the proper officers; and while the file mark of the officer is evidence as to the time, it is not essential under our statutes. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N. C. 668, 96 S. E. 99 (1918).

Same—Delivery at Office.—It is required for a valid filing of a mortgage that it be delivered at the register of deeds, official office, and where a paper was delivered to the register outside of his office it is ineffectual until he returns and makes the proper entry. McHan v. Dorsey, 173 N. C. 694, 92 S. E. 598 (1917).

Sufficiency of Acknowledgement.—A certificate by the clerk of the superior court that the officers of the corporation who signed the deed "acknowledged the due execution of the annexed instrument for the purpose therein set forth," was sufficient to warrant the registration of the deed. Heath, etc., Co. v. Cotton Mills, 115 N. C. 202, 20 S. E. 369 (1894).

Registry Dated When Fees Paid.—A deed was handed to the register for registration, but he refused to register it because his fees were not paid, and the deed was left in his office for several months, when, the fees being paid, he made an endorsement that it was filed on the day first presented, followed by an explanatory endorsement reciting the facts It was held that the register was not compelled to register before his fees were paid, and the facts did not constitute a filing for registration on the day when the deed was first presented to the register. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714 (1891).

Endorsement Unnecessary.—The endorsement required to be made by register of deeds on mortgages and deeds in trust on the day on which such deeds are presented to him for registration, is not essential to registration; and when made is not conclusive evidence, but only prima facie evidence, of the facts therein recited. Cunninggim v. Peterson, 109 N. C. 33, 13 S. E. 714 (1891).

Clerical Mistake.—A registry of a mortgage is not void because of a clerical mistake made by the register in transcribing, which does not affect the sense and provision as to the amount secured, description of property, etc., or obscure the meaning of the instrument. Royster v. Lane, 118 N. C. 156, 24 S. E. 796 (1896).

Omission of Signatures.—The registration of a deed showing the probate, including the separate examination of the wife, and the order of registration, and the names of the grantors, but omitting a copy of their signature at the end of the instrument is sufficient notice under this section. Smith v. Ayden Lumber Co., 144 N. C. 47, 56 S. E. 555 (1907).

Omission of Corporate Seal.—The failure of the register of deeds to copy the seal of the corporation on his books, or make an imitation copy thereon, does not render the conveyance of the lands invalid where the recitals in the deed signify that the seal was in fact attached, it appears upon the original, and the books show the name of the corporation appearing in brackets therein at its proper location. Heath, etc., Co. v. Cotton Mills, 115 N. C. 202, 20 S. E. 369 (1894); Lockville Power Corporation v. Carolina Power & Light Co., 168 N. C. 219, 84 S. E. 398 (1915).

Omission of Great Seal of State.—The fact that it does not appear of record that a scroll or imitation of the great seal of the State was copied thereon, does not invalidate the registry of the grant. The recital in the body of the grant, as recorded, of the affixing of the seal is sufficient evidence of its regularity. Broadwell v. Morgan, 142 N. C. 475, 55 S. E. 340 (1906).

Correction of Omission or Error.—Where the register has committed an error or omission in the recordation of an instrument he has the power to correct such error. Brown v. Hutchinson, 155 N. C. 205, 71 S. E. 302 (1911).

Certificates of Registration Prima Facie Evidence.—The certificates of registration made by registers of deeds are prima facie evidence of the facts therein recited. Sellers v. Sellers, 98 N. C. 13, 3 S. E. 917 (1887).

Cited in Moore v. Ragland, 74 N. C. 343 (1876); Fleming v. Graham, 110 N. C. 374, 14 S. E. 922 (1892).

§ **161-14.1. Recording subsequent entries as separate instruments in counties using microfilm.**—In any county in which instruments are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments, the register of deeds may, except as provided in G. S. 45-37.2 and G. S. 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. (1963, c. 1021, s. 3.)

§ **161-15. Certify and register copies.**—When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall indorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered, and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose. (1899, c. 302; Rev., s. 2657; C. S., s. 3554.)

§ **161-16. Liability for failure to register.**—In case of his failure to register any deed or other instrument within the time and in the manner required by § 161-15, the register shall be liable, in an action on his official bond, to the party injured by such delay. (1868, c. 35, s. 10; Code, s. 3660; Rev., s. 2659; C. S., s. 3555.)

Failure to Register or Properly Index and Cross-Index Is a Breach of Bond.—The failure of the register of deeds to register instruments properly presented or his failure to properly index and cross-index them is a breach of his statutory bond, § 161-4, for which he and the surety on his bond are liable to the person injured by such breach under this section. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

A register is liable for wrongly recording the amount of a mortgage, to a person injured thereby. State v. Young, 106 N. C. 567, 10 S. E. 1019 (1890).

Abatement of Action by Death.—See Wallace v. McPherson, 139 N. C. 297, 51 S. E. 897 (1905).

§ **161-17. Papers filed alphabetically.**—The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same. (1868, c. 35, s. 11; Code, s. 3661; Rev., s. 2660; C. S., s. 3556.)

§ **161-18. Transcribe and index books.**—The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board shall be public records as the original books, and copies therefrom may be certified accordingly. (1868, c. 35, s. 12; Code, s. 3662; Rev., s. 2661; C. S., s. 3557.)

§ **161-19. Number of survey in grants registered.**—The register of deeds in each county in this State, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey. (1889, c. 522, s. 2; Rev., s. 2662; C. S., s. 3558.)

§ **161-20. Certificate of survey registered.**—It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all indorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant. (1905, c. 243; Rev., s. 2663; C. S., s. 3559.)

§ **161-21. General index kept.**—The board of county commissioners, at the expense of the county, shall cause to be made and consolidated into one book a general index of all the deeds and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation. The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the appropriate family name and the appropriate alphabetical subdivision of said family name, according to the particular system in use. (1868, c. 35, s. 13; Code, s. 3663; Rev., s. 2664; C. S., s. 3560; 1929, c. 327, s. 1.)

Cross Reference.—See note to § 161-22.

Editor's Note.—The 1929 amendment added the provision relating to the "Family" index system.

Cited in Woodley v. Gregory, 205 N. C. 280, 171 S. E. 65 (1933); Dorman v. Goodman, 213 N. C. 406, 196 S. E. 352 (1938); Tocci v. Nowfall, 220 N. C. 550, 18 S. E. (2d) 225 (1942); McKnight v. M. & J. Finance Corp., 247 F. (2d) 112 (1957).

§ **161-22. Index and cross index of registered instruments.**—The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having subdivisions of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct subdivision of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances; Provided, further, that it shall be the duty of the register of deeds of each county, in which there is a separate index for conveyances of personal property and for those of real estate, to double index every such conveyance, provided that such conveyance shall contain both species of property. A violation of this section shall constitute a misdemeanor. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C. S., s. 3561; 1929, c. 327, s. 2.)

Local Modification.—Duplin and Forsyth: 1963, c. 739.

Editor's Note.—The 1929 amendment rewrote this section.

Section Mandatory.—The provisions of this section are mandatory. Woodley v. Gregory, 205 N. C. 280, 171 S. E. 65 (1933); Cuthrell v. Camden County, 254 N. C. 181, 118 S. E. (2d) 601 (1961).

Section Construed in Pari Materia with §§ 2-42 and 108-30.1.—The recording and indexing requirements of § 108-30.1 are less specific than those relating to deeds and judgments. They should be construed in pari materia with the recording and indexing provisions of this section and § 2-42. Cuthrell v. Camden County, 254 N. C. 181, 118 S. E. (2d) 601 (1961).

Strict Compliance.—In its interpretation of the North Carolina recording statutes, the Supreme Court of that State has insisted on strict compliance. McKnight v. M. & J. Finance Corp., 247 F. (2d) 112 (1957).

Indexing and Cross-Indexing Is Essential to Proper Registration.—The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by § 161-14, is essential to their proper registration. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936); Johnson Cotton Co. v. Hobgood, 243 N. C. 227, 90 S. E. (2d) 541 (1955).

Section 2-42 does not require the cross-indexing of liens filed in the clerk's office and is not to be confused with the requirements for registering liens, deeds, etc., in the office of the register of deeds as provided by this section which does require cross-indexing. Saunders v. Woodhouse, 243 N. C. 608, 91 S. E. (2d) 701 (1956).

The indexing of the deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. Fowle & Son v. Ham, 176 N. C. 12, 96 S. E. 639 (1918). See Dorman v. Goodman, 213 N. C. 406, 196 S. E. 352 (1938) and comment thereon in 19 N. C. Law Rev. 77.

Effect of Erroneous Book and Page Number in Direct Index.—Where a chattel mortgage was duly transcribed upon the records in the office of the register of deeds in the chattel mortgage book and an erroneous book and page was given opposite the name of the grantor in the direct index and opposite the name of the grantee in the cross-index, but within two days of the time the chattel mortgage was transcribed on the records the cross-index was corrected, such indexing constituted a sufficient compliance with this section. Johnson Cotton Co. v. Hobgood, 243 N. C. 227, 90 S. E. (2d) 541 (1955).

Recording and indexing a mortgage executed by one not the owner of the property mentioned therein will not give constructive notice binding upon third parties dealing with the true owner. It is, at least as to third parties, as though no mortgage had been made. McKnight v. M. & J. Finance Corp., 247 F. (2d) 112 (1957).

Real Estate Mortgages.—The proper indexing of a mortgage upon lands is an essential part of its registration, and where the husband and wife make a mortgage on her lands which is only indexed by the register of deeds in the name of the husband, it is not good as against a subsequent purchaser for value by deed from the husband and wife that had been properly indexed and registered. Heaton v. Heaton, 196 N. C. 475, 146 S. E. 146 (1929).

Chattel Mortgages.—An indexing of chattel mortgages is an essential part of their registration. Whitehurst v. Garrett, 196 N. C. 154, 144 S. E. 835 (1928).

Where for years a proper index of chattel mortgages has been kept in the books wherein the instruments were registered, it is a substantial compliance with this section and § 161-21, it appearing that the record of the instrument could have been found with an ordinary search such as a man of ordinary prudence would have made. Whitehurst v. Garrett, 196 N. C. 154, 144 S. E. 835 (1928).

Indexing and cross-indexing deed of trust given by tenant and remainderman in name of life tenant only followed by the words "et als.," is not a sufficient compliance with the statute, and where another deed of trust is subsequently executed on the same lands which is registered, indexed and cross-indexed in compliance with the statute, the purchaser under foreclosure of the second deed of trust acquires title free from the lien of the improperly indexed prior deed of trust. Woodley v. Gregory, 205 N. C. 280, 171 S. E. 65 (1933), distinguishing Prudential Ins. Co. v. Forbes, 203 N. C. 252, 165 S E. 699 (1932), in which the lien was indexed under "S. T. et ux."

Index of Mortgage on Land Held by Entireties under "J. H. and Wife."—Where the husband and wife mortgage their lands held by the entireties and the mortgage is indexed and cross-indexed under "J. H. and wife," the name of the wife not appearing on the index although it appeared on the mortgage deed, the index is sufficient to put a reasonable man upon inquiry which would have disclosed the facts, and upon the husband's death and the wife's remarriage, a mortgage given by the wife and her second husband is subject to the first mortgage, and the subsequent mortgagee is charged with notice thereof, and he may not restrain the first mortgagee from foreclosing his mortgage on the ground of insufficient indexing, although the name of the wife should have appeared on the index. West v. Jackson, 198 N. C. 693, 153 S. E. 257 (1930).

Capacity in Which Grantor Acted.—There is no law requiring that the cross index shall show the capacity in which the grantor acted in the making or execution of a deed. Tocci v. Nowfall, 220 N. C. 550, 18 S. E. (2d) 225 (1942).

Filing at Same Instant of Time.—Where the record discloses that a purchase-money mortgage and another mortgage given to secure cash payment for land where filed for registration at the same instant of time, neither mortgage has priority over the other, but both constitute a first lien on the land, and the fact that one necessarily appeared before the other on the index of the day's transactions does not alter this result, since the record fails to show that the mortgages were not indexed at the same time. Hood v. Landreth, 207 N. C. 621, 178 S. E. 222 (1935).

Priority of Second Mortgage to One Not Indexed.—A mortgage duly filed for registration and spread upon the registry, but not indexed or cross-indexed as required by this section, is not superior to the lien of a duly registered "second mortgage" on the same property. Story v. Slade, 199 N. C. 596, 155 S. E. 256 (1930).

Under this and the previous section a duly recorded chattel mortgage which is indexed and cross-indexed in the general chattel mortgage index has priority over a mortgage covering the same personal property and also certain real estate which is previously executed and recorded and indexed in the general real estate mortgage index but subsequently indexed and cross-indexed in the general chattel mortgage index. Pruitt v. Parker, 201 N. C. 696, 161 S. E. 212 (1931).

Liability for Failure to Index—Breach of Bond.—The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State v. Grizzard, 117 N. C. 105, 23 S. E. 93 (1895). See Watkins v. Simonds, 202 N. C. 746, 164 S E. 363 (1932).

Failure of the register of deeds to properly index and cross-index registered instruments is a breach of the bond required by § 161-4. Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

Same—Failure to Index Must Cause Damage.—While the register of deeds and the surety on his official bond are liable for his failure to index and cross-index instruments such liability does not arise to the individuals claiming damages therefor unless the default of the register in these particulars has been the proximate cause of injury to the claimant, and liability will not be imputed to the register of deeds when the negligence of the claimant or his agent has caused or concurred in causing the injury. State v. Hester, 177 N. C. 609, 98 S. E. 721 (1919), overruling Davis v. Whitaker, 114 N. C. 279, 19 S. E. 699 (1894). See also Ely v. Norman, 175 N. C. 294, 95 S. E. 543 (1918); Fowle & Son v. Ham, 176 N. C. 12, 96 S. E. 639 (1918).

Stated in Saunders v. Woodhouse, 243 N. C. 608, 91 S. E. (2d) 701 (1956).

§ 161-22.1. Index and cross index of immediate prior owners of land.—Whenever any deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officer appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, it shall be the duty of the register of deeds to index and cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed or from whom the title of such real estate was acquired by the grantor in such instrument.

For indexing and cross-indexing as grantors the names of persons described in this section, the register of deeds shall be allowed a fee of ten cents (10¢). The provisions of this section shall not be construed to repeal any local act, fixing a different fee for such indexing or cross-indexing. (1947, c. 211, ss. 1, 2.)

§ **161-23. Clerk to board of commissioners.**—The register of deeds, or such other county officer or employee as the board of county commissioners shall designate in accordance with the provisions of G. S. 153-40, shall be ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of said board. (Const., art. 7, s. 2; 1868, c. 35, s. 15; Code, s. 3656; Rev., s. 2666; C. S., s. 3562; 1955, c. 247, s. 2.)

Local Modification.—Guilford: 1955, c. 143; Wake: 1953, c. 644; 1959, c. 299.

Cross Reference.—See § 153-40.

Editor's Note.—The 1955 amendment made this section applicable to "such other county officer or employee as the board of county commissioners shall designate in accordance with the provisions of G. S. 153-40."

Same Office.—The register of deeds is ex officio clerk to the board of county commissioners, and the two positions are not separate offices. State v. Gouge, 157 N. C. 602, 72 S. E. 994 (1911).

§ **161-24. Notices to certain officers served by mail.**—The register of deeds shall serve by mail all notices issued by the board of county commissioners to justices of the peace and school committeemen, in lieu of the service by the sheriff, and shall receive as his compensation his actual expenses for mailing, and nothing more. (1879, c. 328, ss. 1, 3; Code, s. 3657; Rev., s. 2667; C. S., s. 3563.)

§ **161-25. Keep list of statutes authorizing special tax.**—The register of deeds in each county, or the auditor in those counties having county auditors, must keep on file and subject to inspection by the public a list of the statutes authorizing a special tax levy in their respective counties, showing the year in which such special tax levy was authorized by the General Assembly of North Carolina and the chapter of the public laws containing the authority for such special levy. Upon payment of a fee of one dollar the register of deeds or county auditor shall furnish to anyone making application therefor a certified copy of said list of statutes. (1917, c. 182; C. S., s. 3565.)

§ **161-26. Duties unperformed at expiration of term.**—Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby. (1868, c. 35, s. 14; Code, s. 3655; Rev., s. 2669; C. S., s. 3566.)

§ **161-27. Register of deeds failing to discharge duties; penalty.**—If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office. (1868, c. 35, s. 18; Code, s. 3659; Rev., s. 3599; C. S., s. 3567.)

Cross References.—As to duty of register to issue marriage license, see § 51-8. As to penalty for issuing license unlawfully, see § 51-17. As to misconduct in public office and penalty therefor, see § 14-228 et seq. As to duty of register in regard to clerk's bonds, see § 109-28; in regard to strays, see § 79-1.

Issuing Marriage License Not Included.—A register of deeds is not liable under this section for issuing a license for the marriage of an infant female under eighteen years of age, without the written consent of her parent or guardian. State v. Snuggs, 85 N. C. 542 (1881).

Chapter 162.

Sheriff.

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ARTICLE 1.

The Office.

§ **162-1. Election and term of office.**—In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the General Assembly, and shall hold his office for four years. (Const., art. 4, s. 24; Rev., s. 2808; C. S., s. 3925.)

Cross References.—As to form of oath required of sheriff before taking office, see § 11-11; as to other oaths required of public officers, see §§ 11-6, 11-7; Const. Art. VI, § 7; as to penalty for failure to take oath, see § 128-5.

Editor's Note.—It was held in Hoke v. Henderson, 15 N. C. 1 (1833), that a public office is to be classed as private property based on a contract between the State and the officer. In cases following Hoke v. Henderson, supra, it was held that there is a contract between the sheriff and the State that he will discharge the duties of the office, and it cannot be abrogated, or impaired except by the consent of both parties. King v. Hunter, 65 N. C. 603 (1871). However, Hoke v. Henderson, supra, and all cases following it in holding a public office to be private property, were overruled by Mial v. Ellington, 134 N. C. 131, 46 S. E. 961 (1903). Therefore, a sheriff is no longer considered to have a vested right in his office, nor is his tenure considered to be based upon a contract with the State.

Effect of Constitutional Amendment on Term of Office.—The term of office of sheriffs-elect begins on the first Monday in December next ensuing their election, and the constitutional amendment changing the term of office of sheriffs from two to four years, approved by the voters in the election of 1938, being in effect on the first Monday in December, the date of the beginning of the term of the sheriff's elected in that election, their term of office is four years in accordance with the amendment then in effect. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894 (1940).

§ **162-2. Disqualifications for the office.**—No person shall be eligible to the office of sheriff who is not of the age of twenty-one years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the General Assembly, or practicing attorney, or who theretofore has been sheriff of such county and has failed to settle with and fully pay up to every officer the taxes which were due from him. (1777, c. 118, ss. 2, 4, P. R.;

1806, c. 699, s. 2, P. R.; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; R. C., c. 105, ss. 5, 6, 7; Code, ss. 2067, 2068, 2069; Rev., s. 2809; C. S., s. 3926.)

Full Settlement of Public Funds by Incumbent.—A person, although elected by the qualified voters of a county to the office of sheriff, was not eligible for said office, if he, having been theretofore sheriff of said county, had failed to settle with, and fully pay up to, every officer the taxes which were due from him. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

A former sheriff must exhibit to the board of commissioners the receipts in full of the proper officers, for all public funds which he received, or ought to have received during his preceding official term, before he will be permitted to re-enter upon a new term. Colvard v. Board, 95 N. C. 515 (1886); Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

Same—Produce Receipts.—The fact that he was able, ready and willing at the time of tendering his bond, to make settlement and payment of any liability on account of funds so received, does not dispense with the requirement that he shall produce receipts in full. Colvard v. Board, 95 N. C. 515 (1886).

Same—Requirement Constitutional.—The requirement that a sheriff-elect who has theretofore been sheriff, produce his tax receipts is not unconstitutional. State v. Dunn, 73 N. C. 595 (1875).

Cited in Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ **162-3. Sheriff may resign.**—Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff. (1777, c. 118, s. 1, P. R.; 1808, c. 752, P. R.; R. C., c. 105, s. 15; Code, s. 2077; Rev., s. 2810; C. S., s. 3927.)

§ **162-4. Removal for misdemeanor in office.**—If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office. (1829, c. 5, s. 8; R. S., c. 109, s. 11; R. C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C. S., s. 3928.)

Cross Reference.—As to removal of unfit officers generally, see §§ 128-16 through 128-20.

Proceedings in Nature of Quo Warranto.—An action by the Attorney General in the name of the people of the State, and of the person who claims the office of sheriff, is the proper mode of proceeding against the person who is alleged to be usurping it, to try the question as to which of the parties is entitled to the office. Loftin v. Sowers, 65 N. C. 251 (1871).

§ **162-5. Vacancy filled; duties performed by coroner.**—If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled. (1829, c. 5, s. 8; R. S., c. 109, s. 11; R. C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C. S., s. 3929.)

Cross References.—As to liability of commissioners for failure to declare vacancy and fill same, see § 153-15 and notes thereto. As to filling vacancy, see § 153-9, subdivision (12) and notes thereto; see also § 162-10.

Commissioners Appoint for Unexpired Term Only.—In case of a vacancy in the sheriff's office, it is within the power of the board of county commissioners to appoint for the unexpired term only. Worley v. Smith, 81 N. C. 304 (1879).

Commissioners Appoint When Sheriff-Elect Fails to Qualify.—Where a sheriff-elect failed to qualify as sheriff for the term to which he had been elected, it became the duty of the board of commissioners forthwith to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

It is the duty of the county commissioners to declare the sheriff's office vacant, and appoint someone for the unexpired term, whenever the incumbent thereof is found to be, on re-election, in arrears in his settlement of the public taxes. People v. Green, 75 N. C. 329 (1876).

S was appointed sheriff in 1875, to fill a vacancy, and held the office until May, 1877; in the meantime—November, 1876—an election was held, and upon the result of certain legal proceedings in May, 1877, M was declared to be elected sheriff, who failed to give bond, and the county commissioners declared a vacancy and appointed B to fill the same. It was held, that S had no right to hold over until the next popular election, but that B was entitled to the office, being elected by the commissioners. State v. Bullock, 80 N. C. 132 (1879).

When Sheriff Becomes Insane.—Upon the prima facie ascertainment of the insanity of the sheriff, or by inquisition of lunacy, the commissioners may declare the office vacant, under this section, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, till such declaration (Greer v. Asheville, 114 N. C. 678, 19 S. E. 635 (1894)), and does not cast upon him the right to collect the taxes, which goes to the sheriff's bondsmen for the current list, and after that the duty devolves upon a tax collector chosen by the county commissioners. Somers v. Board, 123 N. C. 582, 31 S. E. 873 (1898).

Upon the insanity of the sheriff, his right to exercise the office ceases and the agency of his deputies is terminated, and his committal to a hopsital for the insane and the appointment of a guardian for him are certainly at least prima facie evidence of such insanity. Somers v. Board, 123 N. C. 582, 31 S. E. 873 (1898) .

Same—Collection of Taxes.—Upon the declaration of insanity, the sureties of the sheriff had no more rights than would have gone to them upon his death, i. e., to collect the tax list then in his hands. Public Laws 1897, ch. 169, § 117; Perry v. Campbell, 63 N. C. 257 (1869); McNeill v. Somers, 96 N. C. 467, 2 S. E. 161 (1887). And the commissioners are vested with the power of electing a tax collector for the ensuing year, unless and until the sheriff should be restored to reason. Somers v. Board, 123 N. C. 582, 31 S. E. 873 (1898).

§ 162-6. Fees of sheriff.—Sheriffs shall be allowed the following fees and expenses, and no others, namely:

Executing summons or any other writ or notice, sixty cents; but the board of county commissioners may fix a less sum than sixty cents, but not less than thirty cents, for the service of each road order.

Arrest of a defendant in a civil action, and taking bail, including attendance to justify, and all services connected therewith, one dollar.

Arrest of a person indicted, including all services connected with the taking and justification of bail, two dollars.

Imprisonment of any person in a civil or criminal action, thirty cents; and release from prison, thirty cents.

Executing subpoena on a witness, thirty cents.

Conveying a prisoner to jail to another county, five cents per mile.

For prisoner's guard, if any necessary, and approved by the county commissioners, going and returning, per mile for each, five cents.

Expense of guard and all other expenses of conveying prisoner to jail, or from one jail to another for any purpose, or to any place of punishment, or to appear before a court or justice of the peace in another county, or in going to another county for a prisoner, to be taxed in the bill of costs and allowed by the board of commissioners of the county in which the criminal proceedings were instituted.

For allotment of widow's year's allowance, one dollar.

In claim and delivery for serving the original papers in each case, sixty cents, and for taking the property claimed, one dollar, with the actual cost of keeping the same until discharged by law, to be paid on the affidavit of the returning officer.

For conveying prisoners to the penitentiary, two dollars per day and actual necessary expenses; also one dollar a day and actual necessary expenses for each guard, not to exceed one guard for every three prisoners, as the sheriff upon affidavit before the clerk of the superior court of his county shall swear to be necessary for the safe conveyance of the convicts, to be paid by the board of commissioners of the county in which the criminal proceedings were instituted.

Providing prisoners in county jail with suitable beds, bed-clothing, other clothing and fuel, and keeping the prison grounds cleanly, whatever sum shall be allowed by the commissioners of the county.

Collecting fine and costs from convict, two and a half per cent on the amount collected.

Collecting executions for money in civil actions, two and a half per cent on the amount collected; and the like commission for all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff.

Advertising a sale of property under execution at each public place required, fifteen cents.

Seizing specific property under order of a court, or executing any other order of a court or judge, not specially provided for, to be allowed by the judge or court.

Taking any bond or undertaking, including furnishing the blanks, fifty cents.

The actual expense of keeping all property seized under process or order of court, to be allowed by the court on the affidavit of the officer in charge.

Summoning a grand or petit jury, for each man summoned, thirty cents, and ten cents for each person summoned on the special venire.

For serving any writ or other process, with the aid of the county, the usual fee of one dollar, and the expense necessarily incurred thereby, to be adjudged by the county commissioners, and taxed as other costs.

All just fees paid to any printer for any advertisement required by law to be printed.

Bringing up a prisoner upon habeas corpus, to testify or answer to any court or before any judge, one dollar, and all actual and necessary expenses for such services, and five cents per mile by the route most usually traveled, and all expenses for any guard actually employed and necessary.

For summoning and qualifying appraisers, and for performing all duties in laying off homesteads and personal property exemptions, or either, two dollars, to be included in the bill of costs.

For levying an attachment, one dollar.

For attendance to qualify jurors to lay off dower, or commissioners to lay off year's allowance, one dollar; and for attendance, to qualify commissioners for any other purpose, seventy-five cents.

Executing a deed for land or any interest in land sold under execution, one dollar, to be paid by the purchaser.

Service of writ of ejectment, one dollar.

For every execution, either in civil or criminal cases, fifty cents.

Whenever any precept or process shall be directed to the sheriff of any adjoining county, to be served out of his county, such sheriff shall have for such service not only the fees allowed by law, but a further compensation of five cents for every mile of travel going to and returning from service of such precept or process: Provided, that whenever any execution of five hundred dollars or upwards shall be directed to the sheriff of an adjoining county, under this chapter, such sheriff shall not be allowed mileage, but only the commissions to which he shall be entitled. Provided, that when the summons in a civil action or special proceedings shall be from any court of any county other than his own county, the sheriff's fees for serving the same shall be one dollar ($1) for each defendant named therein; and such service shall include the delivery of copy of said summons and complaint or petition attached to the original summons; and that for subpoenas served from other than the county of said sheriff he shall receive a fee of fifty cents (50¢.) for each witness named therein. The proviso immediately preceding shall not affect fees provided in § 162-7 for service upon the waters of the counties of Carteret, Dare, Hyde, and Pamlico.

For the service of summons together with a copy of the complaint, petition or other pleading, the sheriff shall have the fees now prescribed by law in the respective counties for the service of summons only, and shall not be entitled to an additional fee for serving the copy of the pleading unless it is necessary that it be served separately. (1822, c. 1132, P. R.; R. C., c. 31, s. 56; R. C., c. 102, s. 21; Code, ss. 931, 2089, 2090, 2135, 3752; 1885, c. 262; 1891, cc. 112, 143; 1901, c. 64; 1903, c. 541; Rev., s. 2777; C. S., s. 3908; 1924, c. 101; 1925, c. 275, s. 6; 1929, c. 227; 1933, c. 132; 1939, c. 138, s. 2.)

Local Modification.—Cumberland: 1957, c. 768; Forsyth: 1951, c. 449; Lee: 1953, c. 769; Lenoir: 1953, c. 577; Moore: 1955, c. 538; Nash: 1949, c. 1046; Onslow: 1951, c. 517; Pasquotank: 1955, c. 771; Richmond: 1947, c. 235, s. 4; Robeson: 1955, c. 1229; Rockingham: 1953, c. 580; 1957, c. 1203; Wake: 1955, c. 324; 1959, c. 775.

Cross References.—As to cost of laying off homesteads and personal property exemptions, see § 6-28. As to costs in reassessment of homestead, see § 6-29 and notes thereto. As to payment of certain sheriff's fees by county, see § 6-36. As to statute of limitation against fees due sheriff, see § 1-52.

Editor's Note.—The 1924 amendment added the final proviso to the section which fixes the sheriff's fees for summons and subpoenas from outside the county.

The 1925 amendment rewrote the last part of the ninth paragraph removing the cost from the State and placing it upon the county of the proceedings.

The 1929 amendment added the last paragraph.

The 1933 amendment reduced the mileage fee for bringing up a prisoner upon habeas corpus from ten cents per mile to five cents per mile.

The 1939 amendment substituted "two dollars" for "one dollar" in the fourth paragraph.

Construed with § 6-36.—The true construction of this section regulating the fees of sheriffs is had by reading as a proviso at the end thereof § 6-36. Coward v. Commissioners, 137 N. C. 299, 49 S. E. 207 (1904).

Legislative Control of Sheriff's Salaries and Fees.—One who accepts a public office does so, with well defined exceptions as to certain constitutional offices, under the authority of the legislature to change the emoluments he is to receive for the performance of his duties, at any time, and, while the office of sheriff is a constitutional one, the regulation of his fees is within the control of the legislature, and the same may be reduced during the term of the incumbent, or he may therein be compensated by a salary instead of on a fee basis. Commissioners v. Stedman, 141 N. C. 448, 54 S. E. 269 (1906); Mills v. Deaton, 170 N. C. 386, 87 S. E. 123 (1915); State v. Gentry, 183 N. C. 825, 112 S. E. 427 (1922).

Commissions When Debtor Pays after Levy.—At common law a sheriff could not demand commissions, although the debtor paid the creditor the amount of the judgment after he had received the execution and made his levy. He was allowed to do so at first under the act of 1784. Pass v. Brooks, 118 N. C. 397, 24 S. E. 736 (1896).

In Dawson v. Grafflin, 84 N. C. 100 (1881), when property was levied on and advertised for sale under execution, but payment was made before sale, the sheriff was allowed no commission on the sale. The rule in that case is now changed by this section. Cannon v. McCape, 114 N. C. 580, 19 S. E. 703, 20 S. E. 276 (1894).

Whenever a sheriff into whose hands an execution is placed levies the same and advertises a sale, he becomes entitled to his commissions. And if the plaintiff in the execution receives the amount from the debtor, he orders the same to be returned unexecuted, he makes himself liable for the sheriff's fees. Willard v. Satchwell, 70 N. C. 268 (1874), which is in conformity with the section, which changes the ruling in Dawson v. Grafflin, 84 N. C. 100 (1881).

Collecting Executions for Money.—It was said by Manly, J., in Dibble v. Aycock, 58 N. C. 399 (1860): "The law upon the subject of sheriff's fees, Revised Code, chap. 102, § 21, (now this section) gives 2½ per cent commission to that officer upon all moneys collected by him by virtue of any levy, and the like commissions for all moneys that may be paid to the sheriff by the defendant while such precept is in the hands of the sheriff, and after levy. The sum upon which commission is asked, (in the instant case) was paid into the office of the court, for plaintiff, while the precept was in the sheriff's hands, and after a levy. The case is strictly, therefore, within the provisions of the law. That the payment was made under a condition for an injunction does not affect the question at all."

A sheriff is entitled to commissions only on moneys actually collected by himself under execution, and not where the same is paid the plaintiff by defendant after levy. Dawson v. Grafflin, 84 N. C. 100 (1881).

When Sheriff Has Lien.—A lien exists in favor of the sheriff when he does not require the plaintiff, as he has a right to do, to pay his fees in advance. In such instances he has the right of retainer to the extent of the costs out of the amount collected, and cannot be compelled to look exclusively to the plaintiff's prosecution bond, nor prevented from exhausting his remedy against the debtor, by reason of any receipt or compromise between the judgment creditor and debtor. Long v. Walker, 105 N. C. 90, 10 S. E. 858 (1890).

When Process Returned "Fees Not Paid."—Where the return of the sheriff was as follows, to-wit: "Defendant does not petition for homestead, and the plaintiffs refuse to pay homestead fees. No action; the necessary fees not paid." The court held that an officer cannot be required to execute process unless his fees be paid or tendered by the person in whose interest the service is to be rendered. Lute v. Reilly, 65 N. C. 20 (1871); Taylor v. Rhyne, 65 N. C. 530 (1871).

A sheriff is not required to sell the excess of realty beyond the homestead, until the plaintiff has paid, or offered to pay, his fees for so doing. Taylor v. Rhyne, 65 N. C. 530 (1871).

Writ of Ejectment.—A sheriff is not entitled to any extra compensation for executing a "writ of ejectment," or a "writ of possession." Allen v. Spoon, 72 N. C. 369 (1875).

Summons of Tales Jurors.—There is no provision giving sheriffs compensation for the service of summoning tales jurors. This is one of the many gratuitous services expected to be performed by sheriffs. The legislature, no doubt, deemed such service too trivial to be the subject of compensation, for all a sheriff has to do in a performance of the duty is to stand at his desk in the courthouse and, when a deficiency of jurrors occurs, order A, B and C to take seats in the jury box. Bryan v. Commissioners, 84 N. C. 105 (1881).

Power of Judge to Order Commissioners to Pay.—The judge of the superior court has no power to order the commissioners of one of the counties in his district to pay the sheriff any sum for his services in attending the court. Brandon v. Commissioners, 71 N. C. 62 (1874), cited and approved; Griffith v. Commissioners, 71 N. C. 340 (1874).

New Trial Awarded Where Number of Prisoners Conveyed Is Not Shown.—Where, in an action by a sheriff to recover compensation for transportation of prisoners under this section, it does not appear from the facts agreed how many prisoners were conveyed to jails in other counties by the sheriff or how many miles such prisoners were conveyed, a new trial will be awarded in order that the facts necessary to a determination of the question may be found and a proper adjudication made thereon. Patterson v. Swain County, 208 N. C. 453, 181 S. E. 329 (1935).

§ **162-7. Local modifications as to fees of sheriffs.**—Alleghany.—The sheriff of Alleghany County is hereby authorized to charge the following fees:

For serving warrant	$3.00
For serving capias	3.00
For serving subpoena in criminal or civil cases in any court, each	1.00
For serving summons issued by justice of the peace	2.00
For serving claim and delivery summons	3.00

Provided, that when a fee is not fixed herein, such fee shall be charged as is now provided under G. S. 162-7.

The sheriff of Alleghany County shall charge in addition to the above fee for serving claim and delivery summons all actual expenses of transporting, keeping and caring for any property seized under claim and delivery. (1959, c. 919.)

Bertie.—The sheriff of Bertie County shall collect for the use of Bertie County the following fees:

Serving summons in civil actions or special proceedings and serving all civil notices and citations, one dollar ($1.00) for each defendant, or person, firm or corporation served.

Serving subpoena, fifty cents (50¢) for each person. (1947, c. 755.)

Camden.—In addition to any other fees now allowed by law and which are not in conflict herewith, the sheriff of Camden County shall collect the following fees:

(1) Serving summons in civil actions or special proceedings and serving all civil notices and citations, one dollar and fifty cents ($1.50) for each defendant served.

(2) For each arrest in criminal actions, two dollars and fifty cents ($2.50). (1955, c. 72.)

Carteret, Dare and Hyde.—The sheriff of Hyde County shall be allowed the sum of two dollars for serving all warrants or capiases or other criminal processes on the waters of Pamlico Sound or on the waters of any bay in Hyde County. Whenever such sheriff is compelled to go by boat or vessel a distance of more than two miles from any shore or landing in Hyde and of Dare County to serve any civil process upon the waters of Pamlico Sound and waters of Dare County or any bay in Hyde County, such sheriff, in addition to the fee prescribed by law for serving such process, may add the expense of hiring such boat or vessel, which cost or expense shall be taxed by the clerk of the superior court of the county from which such process issued in the bill of costs in the action in which such process issued. Sheriffs and constables of Hyde and Carteret Counties shall receive three dollars for every process executed on board of any boat or vessel lying in the waters between Ocracoke Island, Hyde County, and Portsmouth in Carteret County. (Rev., s. 2777; 1907, c. 206; C. S., s. 3909.)

The sheriff of Dare County shall be allowed his actual traveling expenses incurred by him in serving warrants, capiases or other criminal process on the waters of Dare County or at any point in Dare County across the water. (1909, c. 527; C. S., s. 3909.)

Gates.—The sheriff or other lawful officer of Gates County is authorized to charge the following fees:

For serving claim and delivery proceedings—each defendant	$3.00
For serving summons—each defendant	2.00
For serving warrant—each defendant	2.50
For serving execution—each defendant	2.00
For serving subpoenas—each	1.00
For serving capias—each person	2.50
For serving attachment proceedings—each defendant	4.00
For serving ejectment proceedings—each defendant	3.00
For serving order—each defendant	2.00
For making arrest	2.50
For summoning juror—each	.60
For posting notices	.60
For taking bond	1.00
For laying off homestead	5.00
Commission allowed under execution	5%
For serving sci fa—each person	2.00
For serving notice	2.00
For summoning appraisers to allot homestead or personal property exemption	5.00
For serving warrant for search and seizure of intoxicating liquors	4.00
For serving search warrant for stolen property	4.00

(1957, c. 328.)

Greene.—The sheriff of Greene County shall collect the following fees:

For serving execution against property	$2.00
Commission on collections of executions,	
5% on first $500.00	
2½% on all amounts collected over $500.00	
Laying off homestead, for officer	3.00
To commissioners for laying off homestead each $6.00	18.00
Total homestead fee	21.00
For serving civil summons for each defendant	1.50
For serving claim & delivery process, for each defendant	3.00
For serving attachment proceeding, for each defendant	3.50
For serving execution in summary ejectment proceedings, for each defendant	2.00
For serving subpoena, for each witness	1.00
For serving warrant of arrest for each defendant	3.00
For serving capias, for each defendant	3.00

(P. L., 1919, c. 313; C. S., s. 3909; 1955, c. 1113.)

Harnett.—The sheriff of Harnett County shall be allowed the following fees:

For an arrest, one dollar and fifty cents ($1.50), with fifty cents (50¢) additional for taking bond.

For the service of summons, with or without complaint attached, or for the service of notices, execution, or other court orders, a fee of one dollar each for the first five persons upon whom the process is served; and fifty cents for each additional person.

For the service of claim and delivery process, two dollars for the first defendant, and one dollar each for additional defendant; also actual expenses of caring for property seized.

For the collection of judgments, five per cent on the first five hundred dollars, and two and one-half per cent upon all amounts in excess of five hundred dollars.

In allotting homesteads, a fee of fifty cents for each appraiser and one dollar to the sheriff for his return, and an additional allowance of one dollar each for the use and benefit of each appraiser.

Guardhouse fees shall be sixty cents.

There shall be taxed in each bill of costs for the use and benefit of the sheriff of Harnett County in all cases wherein defendants have been convicted or pleaded guilty to the charge of manufacturing whiskey or possession of any whiskey still, the sum of $10.00 for each still captured by the sheriff or his deputies and for which such defendant or defendants may have been found guilty or pleaded guilty of possessing.

The sheriff of Harnett County shall receive for his services all such fees as are now allowed by law and not herein specifically enumerated. (1933, c. 75, s. 1; 1943, c. 422.)

Haywood, Lincoln, Madison, Pitt and Transylvania.—For every illicit distillery seized as required by law the sheriffs of Haywood, Lincoln, Pitt and Transylvania counties shall receive the sum of twenty dollars, and in Madison County thirty dollars, which shall be allowed by the commissioners of the county in which the seizure was made. (Ex. Sess. 1908, c. 97; P. L. 1919, c. 30; C. S., s. 3909.)

Jackson.—The sheriff or other lawful officer of Jackson County is authorized to charge the following fees:

For serving warrant of arrest	$2.00
For serving civil summons, each defendant	1.50
For serving claim and delivery process	3.00
For serving attachment proceedings	3.00
For serving execution in summary ejectment proceedings, each defendant	2.00
For serving capias	2.00
For serving subpoena, each defendant	1.00
For serving sci fa, each defendant	1.50
For serving orders and notices, each	1.50
For serving warrant of attachment and levy	3.00
For serving garnishment proceedings	1.00
For serving execution in civil action, each defendant	2.00

Commission on collection of executions,

5% on first $500.00

2½% on all amounts collected over $500.00

(1959, c. 140.)

Macon.—The sheriff of Macon County and the constables for the various townships in said county shall collect the following fees: For serving summons in civil actions or special proceedings, and for serving all civil notices and citations, three dollars ($3.00), for each defendant or person, firm or corporation served; for serving subpoenas, two dollars ($2.00) for each person served; for serving warrant of arrest in criminal action, three dollars ($3.00); for serving claim and delivery process, three dollars and seventy-five cents ($3.75); for serving attachment proceedings, three dollars and seventy-five cents ($3.75). The sheriff shall be entitled to collect a commission of three per cent (3%) on collection of execution. (1955, c. 840; 1963, c. 463.)

Madison.—The sheriff or other lawful officer of Madison County is authorized to charge the following fees:

For arrests	$2.00
For serving civil summons	1.50
For serving subpoenas in civil or criminal cases	.50

(1957, c. 252.)

Mitchell.—The board of county commissioners of Mitchell County shall make provision in the county budget for the fiscal year beginning July first, one thousand nine hundred thirty-two, for the payment of the salary of the sheriff, which is hereby fixed at the rate of three thousand ($3,000) dollars per annum payable in equal monthly installments and shall also make provision in said budget for the payment to the sheriff at the same rate per annum for such time as he has served as sheriff since the first Monday of December, one thousand nine hundred thirty. In addition to the salary, as hereinabove provided, the sheriff of Mitchell County shall be entitled to all fees and emoluments accruing to him, by virtue of his office, including such fees as are provided in chapter fifty-six, Public Laws of one thousand nine hundred twenty-nine. (1931, c. 53, ss. 6, 8.)

Moore.—The fees and expenses to be charged and collected by the sheriff of Moore County for services rendered by him and his deputies shall be as hereinafter set out:

Arrest, warrant and capias and civil, each defendant	$2.50
Subpoena, criminal and civil, each witness	1.00
Summons, each defendant	2.00
Claim and delivery	3.50
Each additional defendant	1.00
Attachments	3.00
Each additional defendant	1.00
Execution, each defendant	2.00
Homestead and personal property allotment, fees, sheriff and three commissioners	15.00
Serving notice, each copy	2.00
Summary of ejectment, service of summons, each defendant	1.50
Summary of ejectment, execution by removal	5.00
Commission on collections on executions, 5% on first $500.00 2½% all above $500.00	
Seizure fee, confiscated autos	3.00
Posting notices of sale, each copy	1.00

(1959, c. 417.)

New Hanover.—The sheriff of New Hanover County and the constables for the various townships in New Hanover County shall collect the following fees: Serving summons in civil actions or special proceedings and serving all civil notices and citations, one dollar ($1.00) for each defendant, or person, firm, or corporation served. (1953, c. 94.)

Northampton.—The sheriff of Northampton County shall collect for the use of Northampton County the following fees:

Serving civil summons, one dollar for each defendant;

Subpoena, for each person, thirty cents;

For each arrest, two dollars. (1931, c. 11, s. 4.)

Richmond.—The sheriff of Richmond County shall receive for the imprisonment of any person in a civil or criminal action, fifty cents (50¢), and for release from prison, fifty cents (50¢). The sheriff of Richmond County, shall receive for feeding each prisoner in jail the sum of one dollar and fifty cents ($1.50) per day to be paid by the board of commissioners of Richmond County. Each person imprisoned in the jail of Richmond County shall be charged one dollar and fifty cents ($1.50) per day for board and lodging which shall be taxed in the bill of cost and paid to Richmond County. (1951, c. 106.)

Robeson.—For each person summoned on a special venire the sheriff of Robeson County shall receive thirty cents; but not for a special venire ordered to be summoned from the bystanders, in which case he shall receive ten cents for each person so summoned. (1909, c. 317; C. S., s. 3909.)

Surry.—The sheriff of Surry County shall collect as his fee, a commission on collection of executions as follows:

5% on first $500.00;

2½% on all amounts collected over $500.00; and the like commission on all moneys which may be paid to the plaintiff by the defendant while the execution is in the hands of the sheriff. (1959, c. 325.)

Watauga.—The sheriff of Watauga County is authorized to charge the following fees:

For serving claim and delivery proceedings, each defendant	$3.00
For serving summons, each defendant	2.00
For serving warrant, each defendant	2.50
For serving execution	2.00
For serving subpoenas, each	1.00
For serving capias, each person	2.50
For serving attachment proceedings, each defendant	4.00
For serving ejectment proceedings, each defendant	3.00
For serving order, each defendant	2.00
For making arrest	2.50
For summoning juror, each	.60
For posting notices	.60
For taking bond	1.00
For laying off homestead	5.00
Commission allowed under execution, 5% of the amount	
For serving sci fa, each person	2.00
For serving notice	2.00
For summoning appraisers to allot homestead or personal property exemption	5.00
For serving warrant for search and seizure of intoxicating liquors	4.00
For serving search warrant for stolen property	4.00

The said fees to be charged by the sheriff of Watauga County shall be collected and retained by the sheriff's department. (1959, c. 371.)

Wayne.—The sheriff or other lawful officer of Wayne County is authorized to charge the following fees:

For arrest	$2.50
Serving capias	2.50
Taking bond	.50
Serving subpoena in criminal or civil case, each	1.00
Serving claim & delivery proceedings	4.00
Serving civil summons	1.00
Serving civil summons on each additional defendant	1.00
Serving writ of ejectment	2.00
Serving writ of attachment, or garnishment for taxes or other purpose	3.00
Serving injunction, or order to show cause, on each person	3.00
Serving other writ or paper whatsoever, not otherwise herein fixed, as to each party upon whom said service is made	2.00

The sheriff or other lawful officer whose duty it becomes to serve an execution shall charge in addition to the above fee all actual costs in connection with seizing and holding property under execution.

It shall be the duty of the sheriff to collect said fees and to turn the same over to the general fund of Wayne County for all warrants and other processes served by him or his salaried deputies. (1937, c. 254; 1955, c. 434; 1957, c. 291.)

Local Modification.—Wilson: 1959, c. 1112.

Illicit Distilleries.—The fees of emoluments incident to a sheriff's office as allowance for the seizure and destruction of illicit distilleries, are excluded by a public-local law applicable to a certain county, subsequently enacted, but prior to the commencement of the term of the incumbent, wherein it is provided that the sheriff shall turn over to the county treasurer all moneys collected from fees, and receive a specified sum as a salary in lieu of his fees, with exception only of certain fees allowed to his township deputy in certain instances, the duty to seize the illicit distilleries being the same as any other required of him as sheriff of the county. Thompson v. Board, 181 N. C. 265, 107 S. E. 1 (1921).

ARTICLE 2.

Sheriff's Bonds.

§ 162-8. Sheriff to execute two bonds.—The sheriff shall execute two several bonds, payable to the State of North Carolina, as follows:

One conditioned for the collection and settlement of county and other local taxes according to law, a sum not exceeding the amount of such county and other local taxes for the previous year.

The second bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars, in the discretion of the board of county commissioners, and shall be conditioned as follows:

The condition of the above obligation is such that, whereas the above bounden .... is elected and appointed sheriff of .... County; if therefore, he shall well and truly execute and due return make of all process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person to whom the same shall be due, his executors, administrators, attorneys, or agents; and in all other things well and truly and faithfully execute the said office of sheriff during his continuance therein, then above obligation to be void; otherwise to remain in full force and effect. (1777, c. 118, s. 1; P. R.; 1823, c. 1223, P. R.; R. C., c. 105, s. 13; 1879, c. 109; Code, s. 2073; 1895, c. 270, ss. 1, 2; 1899, c. 54, s. 52; 1899, c. 207, s. 2; 1903, c. 12; Rev., s. 298; C. S., s. 3930; 1943, c. 543.)

I. General Incidents of Bond.
II. Liability on Official Bonds.
  A. Liability Limited to Terms of Bonds.
  B. Successive Terms and Successive Bonds.
  C. Irregularities or Informalities in Bond.
III. Actions on Bonds.

Cross References.

As to official bonds generally, see § 109-1 et seq. As to duty of county commissioners to bring suit on sheriff's bond, in case of default, see § 155-18 and note. See also, §§ 162-9 and 162-10. As to right of action on official bond, see § 109-34 and note. As to statute of limitation on official bond, see § 1-50. As to liability of sheriff's bond when he acts as treasurer, see § 155-6.

I. GENERAL INCIDENTS OF BOND.

Editor's Note.—Prior to the 1943 amendment the sheriff was required to execute three bonds.

When Sheriff Fails to Comply.—Where the sheriff had not complied with the requirements of this section, it was held that he was not entitled to have the county commissioners induct him into office. Colvard v. Board, 95 N. C. 515 (1886).

And this is true notwithstanding the fact that at the beginning of his term there is a tax collector in that county. Colvard v. Board, 95 N. C. 515 (1886).

When Section Complied with.—When a sheriff-elect has fulfilled all the statutory requirements as to the execution of bonds, it is not competent for the county commissioners to refuse the said bonds and deprive the rightful holder of his office. Sikes v. Commissioners, 72 N. C. 34 (1875).

Ceremony.—The ceremony of acknowledgment in open court, and registration, are not essential to the validity of a sheriff's bond. State v. Buchanan, 53 N. C. 444 (1862).

Sufficiency of Forum.—A sheriff's bond to "his Excellency M. S. Captain General and Commander in Chief, in and over the State of North Carolina in the sum of $10,000, to be paid to his Excellency, the Governor, his successor and assigns:" is a bond payable to the Governor in his official capacity, and is an official bond within the act of 1823, which was in force when it was taken. Governor v. Montford, 23 N. C. 155 (1840).

School Fund Included in County Bond.—It is immaterial whether the school fund is, strictly speaking, State taxes or county taxes, or partly both. They are included in the "county" bond and the sheriff must account for them in settling his liability on that bond. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709 (1896); State v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

Process Bond Not Liable for County Taxes.—The county tax cannot be recovered of the sheriff upon the official bond required by the act of 1777, which is the process bond required by this section. Governor v. Barr, 12 N. C. 65 (1826).

The case of Governor v. Crumpler, 12 N. C. 63 (1826), holds that the sureties on the "process" bond are not liable for default as to county taxes, which is true now, as it was then. State v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

Stated in State v. Corbett, 235 N. C. 33, 69 S. E. (2d) 20 (1952).

II. LIABILITY ON OFFICIAL BONDS.

Editor's Note.—See 12 N. C. Law Rev. 394, for note "Extent of Liability on Sheriff's Official Bond."

A. Liability Limited to Terms of Bond.

Rule of Construction.—In a bond given for a specific object, general words shall be construed with reference only to that object. Therefore, when a bond is given with a condition that A. M. shall "collect the county contingent tax, and in all things perform his duty as sheriff" the public taxes cannot be recovered on it. Crumpler v. Governor, 12 N. C. 52 (1826).

Duties Specifically Described.—A sheriff and his sureties are liable on his official bond only for a breach of some duty specifically described therein. Eaton v. Kelly, 72 N. C. 110 (1875).

The general provisions of the bond as to the sheriff's performance of the duties of his office relate to the specific obligations therein set out as to process, and neither the sheriff nor the sureties on his bond are liable in a civil action for damages for injury inflicted by the sheriff while acting in his official capacity. State v. Leonard, 68 F. (2d) 228 (1934).

Not Extended as to Years.—Where an action was brought on the bonds of a sheriff, given in 1872 and 1873 and conditioned only for those years, they could not be enlarged to embrace a default occurring in the year 1874 on the ground that the law required a bond for the principal's whole term of office. State v. McNeill, 77 N. C. 398 (1877).

Where Separate Bond Including All Official Duties Omitted.—Where the condition of a sheriff's bond is made in clear and unambiguous terms to secure the performance of a certain class of duties imposed on him by statute, the superaddition of general terms thereto, though large enough to include all of his official duties, for which by law a separate bond is directed, but omitted to be given, will not extend the liability of sureties to such other duties. Governor v. Matlock, 12 N. C. 214 (1827).

Same—Examples.—In Crumpler v. Governor, 12 N. C. 52 (1826), the sheriff had given four bonds, but the condition of no one of them provided for the payment of the State taxes, the nonpayment of which was the breach alleged. All of them contained general words, "faithfully execute the office," etc. It was held that these words did not extend beyond the duties specially described and provided for in the preceding clause. Mr. Justice Henderson dissented from the conclusion of the court, but he concurred in this rule of construction, and states it with great clearness and force.

State v. Long, 30 N. C. 415 (1848), was an action on a bond with a condition containing general words. In that case it was held that these words did not impose on the sureties an obligation that the sheriff should commit no wrong by color of his office, nor do anything not authorized by law. See also, Jones v. Montford, 20 N. C. 69 (1838); State v. Brown, 33 N. C. 141 (1850); Commissioners v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

State v. Bradshaw, 32 N. C. 229 (1849), is not in conflict with the cases generally on this subject. That case simply decides that a bond to serve process, collect and pay out moneys, etc., is broad enough to cover money collected for a town which it was the sheriff's duty to collect. See State v. McNeill, 77 N. C. 398 (1877).

Trespass under Color of Office.—The sureties in the official bond of a sheriff are not liable for damages for a trespass committed by the sheriff under color of his office. State v. Brown, 33 N. C. 141 (1850). See also, State v. Long, 30 N. C. 415 (1848).

When New Duty Attached.—Where a statute requires a bond from an officer for the faithful discharge of his duty, and a new duty is attached to the office by statute, such bond, given subsequently to the latter statute, embraces a new duty, and is a security for its performance, unless where, when the new duty is attached, a bond is required to be given specifically for its performance. State v. Bradshaw, 32 N. C. 229 (1849).

Liability for Injury Caused by Prisoner While Unlawfully at Large as Trusty.—The statutory bonds required to be given by a sheriff under this section may be put in evidence as though they had been written as prescribed by § 109-1, and where suit is brought on one of the bonds which provides for liability if the sheriff fail to properly execute and return all process, or properly pay all moneys received by him by virtue of any process, "and in all things well and truly and faithfully execute the said office of sheriff," the general provisions of the bond as to the sheriff's faithful performance of the duties of the office relate to the specific obligations therein set out as to service and return of process, and neither the sheriff nor the sureties on his bond is liable thereon in a civil action for damages for a negligent injury inflicted by a prisoner lawfully intrusted to the custody of the sheriff while such prisoner was unlawfully permitted by the sheriff to be at large as a trusty. Sutton v. Williams, 199 N. C. 546, 155 S. E. 160 (1930).

Liability for Deputy's Negligent Injury of Prisoner in Jail.—The liability of the surety on the bond of a public officer is limited by the terms of the bond, and the condition of the bond of a sheriff for the "faithful execution of his office" refers to the specific condition for the "due execution and return of process" and the terms of the statutory bond do not impose liability on the surety for the negligent act of a deputy unconnected with the execution and return of process, and the surety's motion to nonsuit is properly granted in a prisoner's action to recover for negligent injury inflicted by a deputy while he was in jail. Davis v. Moore, 215 N. C. 449, 2 S. E. (2d) 366 (1939).

Liability for Use of Excessive Force in Making Arrest.—Where the complaint in an action against a sheriff in his official capacity and against his surety alleged that plaintiff was permanently injured by the sheriff's use of excessive force in arresting him, and that the arrest was wrongful and unlawful, defendants' demurrer to the complaint should have been overruled, since, even if the terms of the bond "and in all other things well and truly and faithfully execute the said office of sheriff," refer solely to the specific duties enumerated and do not impose liability for the wrong alleged, the provision of § 109-34 extends the liability on the sheriff's general official bond and imposes liability for the wrong alleged committed under color of his office. Price v. Honeycutt, 216 N. C. 270, 4 S. E. (2d) 611 (1939).

Change of Amount of Salary or to Fee Basis.—The liability of a surety on a sheriff's bond, given under this section is not affected by the fact that the sheriff, pending the life of the bond, has been put upon a salary instead of a fee basis, or the amount of his salary has been changed under the authority of a statute. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

B. Successive Terms and Successive Bonds.

The various bonds separately required to be given by the sheriff under this section imposes a distinct liability on the sureties on each bond separately for the terms of office for which given, and where one is given by the same surety for the same sheriff for more than one successive term, the giving of the bond for the succeeding term does not discharge the bond previously given nor release the surety from liability thereon, and a separate cause of action lies against the surety on the bond for each term. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

Appointment of Sheriff Removed for Failure to Give Bond.—Where under § 162-10, the board of county commissioners has declared the office of sheriff of that county vacant for his failure to give the bond required by this section, and has appointed another who likewise failed to give the bonds, and has again appointed the former sheriff, who gives the necessary bonds and then qualifies, his term is by virtue of his appointment by the board of county commissioners, and the liability of the sureties on his official bonds commences from the time of his appointment. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

Failure to Renew Bond.—The sureties on the bond of a sheriff are liable for all official delinquents of which the principal may be guilty during the continuance of his term of office. Where a sheriff, elected in 1872, continued to exercise the duties of the office after his failure to renew his bond and produce his receipts, and was re-elected in 1874, and failed to collect and pay over the taxes for that year, it was held that he was liable on his bond of 1872. State v. Pipkin, 77 N. C. 408 (1877). See also, State v. McIntosh, 31 N. C. 307 (1848); State v. Clarke, 73 N. C. 255 (1875); State v. McNeill, 74 N. C. 535 (1876).

Effect of Termination of Incumbency.—When the deputy of a sheriff received the note of a married woman for collection within a magistrate's jurisdiction, and failed to collect the same during the sheriff's official term, but afterwards, when acting as the deputy of his successor, collected it and failed to pay over the money, it was held that there was no breach of the former sheriff's official bond. State v. Buchanan, 60 N. C. 93 (1863).

Taxes for Preceding Year.—A sheriff's sureties for one year are not liable for any taxes received by him under the lists furnished in the preceding year; but the sureties of that year are liable. Fitts v. Hawkins, 9 N. C. 394 (1823).

C. Irregularities or Informalities in Bond.

When Valid as Voluntary Bond.—When a bond made payable to the State is given by a sheriff for the discharge of public duties, though not taken in the manner or by the persons designated by law to take it, will be good as a voluntary bond. Being for the benefit of the State, the State will be presumed to have accepted it when it was delivered to a third person for its benefit. State v. McAlpin, 26 N. C. 140 (1843).

Excessive Bond.—If a sheriff voluntarily give bond, with sureties, in an amount larger than is prescribed by law, they will be liable for a breach thereof. State Bank v. Twitty, 9 N. C. 5 (1822); Governor v. Matlock, 9 N. C. 366 (1823).

III. ACTIONS ON BONDS.

Demand Unnecessary.—A demand is not necessary before suit by the county treasurer on a sheriff's bond, as the sheriff is required by law to settle on or before a day certain. McGuire v. Williams, 123 N. C. 349, 31 S. E. 627 (1898).

Proper Relator for Settlement of School Taxes.—The Code of 1883, § 2563, made the county commissioners the proper relators in an action on the sheriff's bond to compel a settlement of the school taxes. The Acts of 1889, ch. 199, substituted the county board of education as relators (Board v. Wall, 117 N. C. 382, 23 S. E. 358 (1895)), but Acts of 1895, ch. 439, abolished the county board of education and again made the county commissioners the proper relators. Tillery v. Candler, 118 N. C. 888, 24 S. E. 709 (1896); State v. Sutton, 120 N. C. 298, 26 S. E. 920 (1897).

Certified Copy as Evidence.—The office of the clerk of the superior court of the county for which one is sheriff is the proper place of deposit for the bond of such sheriff. Therefore, a copy of such bond, certified by such clerk, is competent evidence of its contents. Such a copy is competent (at least under the maxim, omnia presumuntur, etc.) even although the certificate does not state that it has been recorded. State v. Lawrence, 64 N. C. 483 (1870).

Previous Settlements Prima Facie Correct.—Previous settlements with the sheriff, when approved by the board of commissioners, are prima facie correct, and the burden of proving to the contrary rests upon them. Commissioners v. White, 123 N. C. 534, 31 S. E. 670 (1898).

Settlement of One Tax Fund at Expense of Another.—Where a sheriff's settlement of one tax fund is made partially by an amount deducted from another tax fund, the settlement exonerates him and his surety from liability on the bond for the taxes settled; he and his sureties are liable in an action on the bond for the taxes misappropriated for such defalcation. McGuire v. Williams, 123 N. C. 349, 31 S. E. 627 (1898).

Plea in Bar.—The general rule is that where there is a plea in bar it must be disposed of before a reference for an account can be made. Commissioners v. White, 123 N. C. 534, 31 S. E. 670 (1898).

Summary Judgment Set Aside.—Where judgment is entered up summarily against the sureties of a sheriff, upon a proper case, it will be set aside. Crumpler v. Governor, 12 N. C. 52 (1826).

When Sum Differs from That Required.—A sheriff's bond payable to the Governor and his successors in a sum different from that directed by law, cannot be sued in the name of the successor. Governor v. Twitty, 12 N. C. 153 (1827).

Failure to Take Bail in Civil Cases.—In Governor v. Jones, 9 N. C. 359 (1823), it was held that the sheriff was not liable in debt upon his official bond for omitting to take bail when he executed a capias in civil cases; but must be proceeded against as bail by sci. fa.

Return Conclusive.—The return of a sheriff that a fi. fa. is satisfied is conclusive upon his sureties in an action on his official bond. Governor v. Twitty, 12 N. C. 153 (1827).

Failure to Have Insolvent's Allowance Made.—Where a sheriff failed to settle for taxes within the time appointed by law and not having had allowance made him by the commissioners for insolvents at the time and in the manner prescribed by law, he cannot have such allowances made by the court in an action brought against him on his official bond for the balance due by him on the tax list. Board v. Wall, 117 N. C. 377, 23 S. E. 358 (1895).

Misjoinder.—Where a sheriff has been elected for successive terms of office, and appointed for a third term by the county commissioners after the office for his third term had been declared vacant, an action against him and the sureties on his bonds given under the provisions of this section, for defalcation during the successive terms is a misjoinder of parties and causes of action, and a demurrer thereto is good. Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ 162-9. County commissioners to take and approve bonds.—The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safekeeping. The bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or reenter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected. (1806, c. 699, s. 2, P. R.; 1830, c. 5, s. 5; R. C., c. 105, s. 6; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; Code, ss. 2066, 2068; Rev., s. 2812; C. S., s. 3931.)

Cross References.—See § 153-9, subdivisions (11), (12). As to disqualification for office, see § 162-2.

Purpose.—The evident purpose of the section is only to protect and safeguard the public revenue and to insure its honest collection and application. Hudson v. McArthur, 152 N. C. 445, 67 S. E. 995 (1910).

Execution and Approval of Bonds.—To entitle a sheriff to be inducted into office, it is essentially necessary that the bonds must be executed by him and approved by the county commissioners. Dixon v. Commissioners, 80 N. C. 118 (1879).

Not Liable to Sureties for Failure to Demand Receipt.—The county commissioners are not liable to the sureties on the bond of a defaulting sheriff and tax collector whose defalcations they were required to pay, for a failure to demand of the sheriff his receipts in full, for the taxes collected the previous year before permitting him to receive the tax duplicate for the current year. Hudson v. McArthur, 152 N. C. 445, 67 S. E. 995 (1910).

Cited in Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ 162-10. Duty of commissioners when bonds insufficient.—It shall be the duty of the board of county commissioners whenever they shall be of opinion that the bonds of the sheriff of their county are insufficient, to notify the sheriff in writing to appear within ten days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bonds, or to justify his bonds, it shall be the duty of the board to elect forthwith some suitable person in the county as sheriff for the unexpired term, who shall give proper and lawful bonds and be subject to like obligations and penalties. (1879, c. 109, s. 2; Code, s. 2074; Rev., s. 2813; C. S., s. 3932.)

Cross References.—As to bonds required of sheriff, see § 162-8; see also § 153-9, subdivisions (11), (12), and § 162-5. As to liability of commissioners for failure to declare vacancy and fill same, see § 153-15.

Right to Examine Sheriff and Vacate Office.—Under article seven, section 2 of the Constitution (1868 as revised) the county commissioners have the right to summons the sheriff to justify or renew his official bond, whenever in fact, or in their opinion the sureties have become, or are liable to become insolvent. And it is not only the right, but the duty of the commissioners, to declare the office of sheriff vacant, and appoint one for the unexpired term, whenever the incumbent thereof takes no notice of a summons by the commissioners to appear before them and justify or renew his bond. People v. Green, 75 N. C. 329 (1876).

Power to Fill Vacancy.—Upon the failure of a sheriff-elect to give bonds required by law, the board has power to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

Cited in Pender County v. King, 197 N. C. 50, 147 S. E. 695 (1929).

§ **162-11. Liability of commissioners.**—If any board of county commissioners shall fail to comply in good faith with the provisions of this article, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. (1868-9, c. 245, s. 3; Code, s. 2075; Rev., s. 2814; C. S., s. 3933.)

Court Cannot Compel Approval.—The boards of county commissioners are liable in damages if they knowingly accept insufficient bonds, and approval or disapproval of such bonds is within their discretion, and the courts cannot compel them to approve and receive bonds which they find to be insolvent or insufficient. State v. King, 117 N. C. 117, 23 S. E. 92 (1895).

Liable for All Loss.—If any board of commissioners shall fail to comply with the provisions of the statute, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor of the district. Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925).

When Liable for One Penalty Only.—The statutes requiring the sheriff to renew annually his official bonds, and, in addition, produce receipts for the public moneys collected by him, and in default thereof it shall be the duty of the board of county commissioners to declare the office vacant, are intended to effectuate the same purpose, and therefore a member of the board of county commissioners is liable for only one penalty for failure to perform his duty in that connection. Bray v. Barnard, 109 N. C. 44, 13 S. E. 729 (1891).

§ **162-12. Liability of sureties.**—The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty. (1829, c. 33; R. C., c. 105, s. 14; Code, s. 2076; Rev., s. 2815; C. S., s. 3934.)

Cross Reference.—See § 162-8 and notes thereto.

Liable for Amercements.—The sureties to a sheriff's bond, with a condition in the ordinary form, are liable for an amercement of the sheriff for a default committed during his official year, though the final judgment for the amercement may not have been rendered until after the expiration of the year. Governor v. Montford, 23 N. C. 155 (1840).

Same—Records of Proceedings as Evidence.—The records of the proceedings against a sheriff for an amercement imposed upon him, are not evidence against his sureties to prove his default; but they are admissible against them to prove the fact of the existence of the amercement itself. Governor v. Montford, 23 N. C. 155 (1840).

Return Conclusive.—A sheriff cannot be heard to deny or contradict his return; as to him it is conclusive, and he and the sureties upon his bond are liable to the plaintiff in the execution for the sums so indorsed. Walters v. Moore, 90 N. C. 41 (1884).

Judgment or Amercement Not Conclusive.—A judgment of an amercement against a sheriff is not conclusive against the sureties on his bond. They may show that the judgment was either fraudulently or improperly obtained against their principal. State v. Woodside, 29 N. C. 296 (1847).

Article 3.

Duties of Sheriff.

§ 162-13. To receipt for process.—Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (1848, c. 97; R. C., c. 105, s. 18; Code, s. 2081; Rev., s. 2816; C. S., s. 3935.)

Cross References.—As to collection of inheritance taxes by sheriff and commission therefor, see § 105-17. As to attendance upon county court, see § 7-337. As to duty to adjourn court in absence of judge, see § 7-76. As to duty to summon and swear appraisers in homestead proceedings, see § 1-371. As to duty when warrant of attachment directed to sheriff, see § 1-447. As to duties and liabilities in claim and delivery, see §§ 1-476, 1-477. As to attachment for failure to obey writ of habeas corpus, see § 17-16. As to attachment against sheriff to be directed to coroner, see § 17-18. As to official deed, when sheriff selling or empowered to sell is out of office, see § 39-5. As to sheriff as tax collector, see §§ 105-401, 105-402.

This section obviously has no reference to final process. Wyche v. Newsom, 87 N. C. 144 (1882).

§ 162-14. Execute process; penalty for false return.—Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and others process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding term after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages.

Every sheriff and his deputies, and every constable, shall execute all writs and other process to him legally issued and directed from a justice's court and make due return thereof, under penalty of forfeiting one hundred dollars for each neglect or refusal, where such process shall be delivered to him ten days before the return day thereof, to be paid to the party aggrieved by order of such court, upon motion and proof of such delivery, unless the sheriff or constable can show sufficient cause to the court at a day within three months from the date of the entry of the judgment nisi, of which the officer shall be duly notified. (1777, c. 218, s. 5, P. R.; 1821, c. 1110, P. R.; R. C., c. 105, s. 17; 1874, c. 33; Code, s. 2079; 1899, c. 25; Rev., s. 2817; C. S., s. 3936.)

I. General Considerations.
II. Neglect or Failure to Make Due Return.
    A. In General.
    B. What Constitutes Failure and Defenses.
        1. The Essential Elements of Failure.
        2. When Return Is Sufficient.
    C. Actions Concerning Amercements.
III. False Return.
IV. Writs from Justice's Court.

Cross References.

See §§ 14-242, 162-17. As to duty to note date of receipt and date of execution on process, see § 2-41. As to penalty for false return to writ of habeas corpus, see § 17-27.

I. GENERAL CONSIDERATIONS.

Summary of Section.—The section authorizes the following penalties and remedies: 1. An amercement nisi for $100, on "motion and proof" by the party aggrieved, for failure to "execute and make due return." 2. A qui tam action for penalty of $500 for a "false return," one moiety to the party aggrieved, and the other to anyone who will sue for the same. 3. An action for damages by the party aggrieved. 4. An amercement nisi for $100 in justices' courts, on "motion and proof" by the party aggrieved, for "neglect or refusal" to execute process of such court. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Who May Issue Process.—Process can be issued by the mayor of a town or city to any lawful officer such as a sheriff, whose duty it then becomes to execute and make due return. State v. Cainan, 94 N. C. 880 (1886); Paul v. Washington, 134 N. C. 363, 47 S. E. 793 (1904).

"Return" Defined.—The term "return" means that the process must be brought back and produced in the court whence it issued with such indorsement as the law requires. Watson v. Mitchell, 108 N. C. 364, 12 S. E. 836 (1891).

Making Due Return Is an Affirmative Requirement.—The requirements that an officer having process in hand for service must note on the process the date received by him under § 1-94 and make due return thereof under § 162-14 are affirmative requirements of these sections. State v. Moore, 230 N. C. 648, 55 S. E. (2d) 177 (1949).

What Constitutes Due Return.—In Waugh v. Brittain, 49 N. C. 470 (1857), it was said by Battle, J.: "We concur with his Honor in the opinion, due return of process, means a proper return, made in proper time; and such, we believe, has always been the construction put upon those words, as used in the Act of 1777, Rev. Code, ch. 105, § 17 [now this section.]"

A return of a sheriff to a fi. fa. that "he had made a levy on personal property and taken a forthcoming bond, but had not sold it, that the obligors did not deliver the property on the day, and that, after the day, it was too late to make a sale," is not such a "due return" of the process as will exempt the sheriff from amercement. Frost v. Rowland, 27 N. C. 385 (1845).

Where a sheriff indorsed upon an execution the words "debt and interest due to sheriff, costs paid into office"; and upon another, the word "satisfied," without stating what disposition he had made of the fund the returns were held to be sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N. C. 142 (1882).

Nor is he required to note thereon the date of its delivery to him. (The act of Assembly has no reference to final process.) Person v. Newsom, 87 N. C. 142 (1882).

Same—Mixed Question of Law and Fact.—Whether, in any particular case, a due return has been made, may involve questions, both of law and fact. Whether the return is a proper one in form and substance is a question of law, to be decided by the court, but whether it was made in proper time, is a question of fact, to be decided by the jury. Waugh v. Brittain, 49 N. C. 470 (1857).

Manner of Making Return—By Mail.—If, then, the mail can be used as a medium by which process can be transmitted to a sheriff, so as to charge him with its reception, it would seem that he ought to be allowed to adopt the same means for making his return, at least so far as the due time of the return is involved. In Waugh v. Brittain, 49 N. C. 470 (1857), it was intimated that he might do so, and that he would be excused if the letter, indorsing the process, with his return upon it, was properly mailed in due time. Cockerham v. Baker, 52 N. C. 288 (1859), affirmed in Yeargin v. Wood, 84 N. C. 326 (1881).

Fees in Advance.—Until his fees are paid or tendered, a sheriff is not bound to execute process. Johnson v. Kenneday, 70 N. C. 435 (1874).

Applied in East Carolina Lumber Co. v. West, 247 N. C. 699, 102 S. E. (2d) 248 (1958).

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

A. In General.

An amercement is a penalty, and is for a fixed sum without regard to the amount of the plaintiff's damage. Thompson v. Berry, 65 N. C. 484 (1871).

Subsequent Term.—A sheriff may be amerced for a nonreturn of process at a term subsequent to that at which the process was returnable. Hyatte v. Allison, 48 N. C. 533 (1856).

A sheriff, failing to execute and return process, shall be subject to a penalty to be paid to the party aggrieved, by order of the court, on motion, and proof that process was delivered to him before the sitting of the court to which it was returnable, unless the sheriff shows sufficient cause to the court for his failure "at the court next succeeding such order." And there is nothing in the statute to prevent a sheriff not returning process from being amerced at a subsequent term to that to which the return should have been made. Halcombe v. Rowland, 30 N. C. 240 (1848).

Expiration of Term.—A sheriff, who goes out of office before the return day of the writ delivered to him, is not subject to amercement for failure to return it. McLin v. Hardie, 25 N. C. 407 (1843); State v. Woodside, 29 N. C. 296 (1847).

Process Must Be Delivered Twenty Days before Term.—To bring a delinquent officer within the provisions of the statute and subject him to its pains, the process must have been delivered to him twenty days before it is to be returned, and there must be "proof of such delivery." Yeargin v. Wood, 84 N. C. 326 (1881).

When Returnable.—Executions shall be returnable to the term of the court next after that from which they bear teste. The sheriff is allowed all the days of the term to return an execution, unless he be ruled, upon motion and cause shown, to return it on some intermediate day. Person v. Newsom, 87 N. C. 142 (1882); Turner v. Page, 111 N. C. 291, 16 S. E. 174 (1892).

A sheriff who fails to make return of process before the adjournment of the court to which it is returnable, is subject to the penalty prescribed by statute. Boyd v. Teague, 111 N. C. 246, 16 S. E. 338 (1892); Turner v. Page, 111 N. C. 291, 16 S. E. 174 (1892).

Not Applicable to Federal Marshal.—In Lowry v. Story, 31 F. 769 (1887), it was said: "The motion before us is founded upon this law of the State imposing a penalty upon sheriffs who fail or neglect to execute process duly issued to and received by them. The motion cannot be allowed, as this court has no power to enforce against the marshal a penalty imposed by the law of this State upon a sheriff for neglect of duty."

B. What Constitutes Failure and Defenses.

1. The Essential Elements of Failure.

In General.—The delivery of the process to the officer and his failure to execute its commands and make due return are essential ingredients in the criminal dereliction of duty followed by the penal consequences thus summarily enforced. Yeargin v. Wood, 84 N. C. 326 (1881).

Insufficient Return.—Under the Act of 1777 (Rev. St. c. 109, § 18), imposing a fine on a sheriff for not making due return of process placed in his hands, a return by the sheriff on a fi. fa. that he has levied on goods subject to older executions, without stating whether he had sold property seized or still held it, is not a due return, and subjects him to amercement. Buckley v. Hampton, 23 N. C. 322 (1840).

Failure to Sell Property and Make Return.—A sheriff who had not sold property under execution nor made return on writs of venditioni exponas should be amerced. Anonymous, 2 N. C. 415 (1796).

Agreement of Parties.—Where a scire facias was issued on a judgment, the sheriff was liable to amercement for failure to return the process, though the parties agreed, while it was in the sheriff's hands, that the collection of the money should be suspended, so as to enable them to make a full settlement. Morrow v. Allison, 33 N. C. 217 (1850).

Refusal of Clerk to Receive Return.—It is not a sufficient excuse to an officer for neglecting to return a process to the proper term of the court that he had tendered it to the clerk, who had refused to receive it, nor that the clerk had died during the term. Hamlin v. March, 31 N. C. 35 (1848).

False Impression as to When Summons Returnable No Defense.—A summons issued June 27, 1901, returnable at the July, 1901, term of the court, which recited that it was returnable on the fifth Monday before the first Monday in September, 1901, and was not returned until August 6, 1901, it was held not to constitute a defense to an action to recover the penalty prescribed by the section for the sheriff's failure to return the same within the time required, that he had the erroneous impression that the summons was returnable at a later date, and that his failure was occasioned by endeavoring to obtain service. Bell v. Wycoff, 131 N. C. 245, 42 S. E. 608 (1902).

Failure to Pay or Tender Fees.—Though a sheriff is not required to execute process until his fees are paid or tendered by the person at whose expense the service is to be rendered, he is not excused thereby for a failure to make a return of process; for, if he has any excuse for not executing the writ, he must state it in his return. Jones v. Gupon, 65 N. C. 48 (1871).

Belief That Lien Divested by Subsequent Legislation.—A sheriff is liable to be amerced for a return on a vend. exp. of "no goods," etc., after levy, although made in the belief that the lien has been divested by subsequent legislation. McKeithan v. Terry, 64 N. C. 25 (1870).

Order Restraining Further Prosecution of Action in Which Execution Issued.—Execution of a judgment against defendant in summary ejectment to remove her from the land was issued and delivered to the sheriff. The sheriff failed to serve the execution because of an intervening order restraining the plaintiff from further prosecuting the summary ejectment, issued in a prior pending action to try title. It was held that motion to amerce the sheriff for failure to serve the execution was properly denied, since the sheriff had shown sufficient cause for failing to serve the execution. Massengill v. Lee, 228 N. C. 35, 44 S. E. (2d) 356 (1947).

2. When Return Is Sufficient.

In General.—Where a sheriff indorsed on an execution the words, "Debt and interest due to sheriff; costs paid into office," it was held that the return was sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N. C. 142 (1882).

Return within Time Prescribed by Law.—A sheriff cannot be amerced if he return an execution within the time prescribed by law, though he fail to return the money levied thereon into court, or pay it to the party or his attorney. Davis v. Lancaster, 5 N. C. 255 (1809); Cockerham v. Baker, 52 N. C. 288 (1859).

Indorsing Process "Served."—While it is a better practice for officers to make their returns of process show with particularity upon whom and in what manner the process was served, their indorsement "served" implies service as the law requires and such return signed by the officer in his official capacity is sufficient to show prima facie service at least, and error in the date of service is immaterial. State v. Moore, 230 N. C. 648, 55 S. E. (2d) 177 (1949).

Indorsing Execution "Satisfied."—Where a sheriff indorsed upon an execution merely the word "satisfied" without stating what disposition he had made of the fund, the return was sufficient in law to relieve him from an amercement for not making due return. Wyche v. Newsom, 87 N. C. 144 (1882).

Same—Return Marked "Satisfied" without Satisfaction.—In Cockerham v. Baker, 52 N. C. 288 (1859), it was said by Mr. Justice Battle that "the counsel for the plaintiff contended that there was not a due return of the process as required by § 17, ch. 105, Rev. Code, (now this section), because, though returned 'satisfied', the money was not sent with it, nor paid into the clerk's office, nor to the plaintiff or his attorney. If this question were before the court for the first time, we should be strongly inclined to hold this objection to be fatal to the return. The writ, in its terms, demands that the sheriff shall have the money levied before the court, and it would seem a return of 'satisfied', without the 'satisfaction,' is but a mockery. But, at a very early period, a different construction was put upon the Act of 1777 (ch. 118, § 6, Rev. Code of 1820), and as that act has been twice re-enacted in the same terms, we must consider that construction as settled; see Davis v. Lancaster, 5 N. C. 255 (1809); and see also, 1 Rev. Stat., ch. 109, § 18, and the Rev. Code, ch. 105, § 17, (now this section) in both of which there is a marginal reference to that case, and according to it a sheriff cannot be fined if he return the execution within the time prescribed by law, though he fail to return the money levied thereon into court, or pay it to the party or his attorney."

Where Debtor Had No Property in Excess of His Exemptions.—A sheriff is not liable to amercement for failure to have in court the amount of an execution issued on a judgment for a debt contracted prior to 1868, when the judgment debtor had no property in excess of his exemptions, as the exemption laws (Const. Art. 10, and the statutes pursuant thereto) so modify Battle's Revisal, c. 106, § 15, as not to authorize the infliction of a penalty therein imposed for disobedience to the exemption laws. Richardson v. Wicker, 80 N. C. 172 (1879).

C. Actions Concerning Amercements.

Jurisdiction of Superior Court.—Where the sheriff has laid himself liable to the penalty for failure to make due return of process, the superior court has jurisdiction to give the judgment nisi on motion. Thompson v. Berry, 64 N. C. 79 (1870).

Time of Trial.—See Hogg v. Bloodworth, 1 N. C. 593 (1804).

Necessity of Trying Issues of Torts on Affidavits.—On a scire facias against a sheriff to amerce him for not returning an execution into the Supreme Court, whence it issued, issues of fact must be tried on affidavits, as the court has no power to call a jury. Kea v. Melvin, 48 N. C. 243 (1855).

Remedy by Rule.—When a prima facie case is made against a sheriff, either upon affidavit or other sufficient proof, a rule nisi is granted as of course, and surplusage in the affidavit will not impair its effect. Ex parte Schenck, 63 N. C. 601 (1869).

Process Mailed Sufficient for Amercement Nisi.—The proof is sufficient for an amercement nisi under former rulings, where it is shown that the process in an envelope properly directed and with postage prepaid has been deposited in the post office in time to enable it to reach its destination in the due course of the mail twenty days before the session of the court to which it is returnable. State v. Latham, 51 N. C. 233 (1858); Yeargin v. Wood, 84 N. C. 326 (1881).

Where in such case the summons sent by mail did not reach such officer until six days before the sitting of the court to which it was returnable, and he served it in two days thereafter he is not liable to amercement. Yeargin v. Wood, 84 N. C. 326 (1881).

Same—To Sheriff in Another County.—It has frequently been decided by the Supreme Court, after argument and full consideration, that if it be made to appear that a clerk has sent a writ to the sheriff of another county, enclosed in a stamped envelope, in due time to reach him in the regular course of the mails, twenty days before the sitting of the court to which it is returnable, it is sufficient to authorize a judgment nisi for an amercement for the nonreturn of the process. State v. Latham, 51 N. C. 233 (1858); Cockerham v. Baker, 52 N. C. 288 (1859).

Presumption Subject to Rebuttal.—And the officer is allowed to rebut the presumption of its having been received and to discharge himself, as upon a motion for a rule against him, by making an affidavit that the writ did not come to his hands. Yeargin v. Wood, 84 N. C. 326 (1881).

Judgment Nisi Made Absolute.—Where judgment nisi for $100 is rendered against a sheriff for failure to make due return of process, and no sufficient reason is shown for the failure, the judgment should be made absolute. Graham & Co. v. Sturgill, 123 N. C. 384, 31 S. E. 705 (1898).

Judgment Absolute Set Aside.—In a proceeding to enforce the statutory penalty against a sheriff for failure to make due return of process, it is not error to set aside a judgment absolute where it appeared that he had no notice of the rule upon him to show cause. Yeargin v. Wood, 84 N. C. 326 (1881).

Method of Recovering Penalty Exclusive.—The method by which a sheriff may be amerced for unlawfully failing to execute a warrant it was his duty to serve, as prescribed by this section, is alone to be followed in an action for penalty brought thereunder. Walker v. Odom, 185 N. C. 557, 118 S. E. 2 (1923). And a civil action cannot be resorted to. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Same—Nature and Form.—The statute provides only for an amercement, on motion, for the failure of a sheriff to make "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890). See also, Harrell v. Warren, 100 N C. 259, 6 S. E. 777 (1888).

Penalty Gives Way to Exemption Laws.—The provisions of the exemption laws (Constitution, Art. X, and the statutes passed in pursuance thereof) so modify ch. 106, § 15 Bat. Rev., now this section, as not to authorize the infliction of the penalty therein imposed for obedience to said exemption laws. Richardson v. Wicker, 80 N. C. 172 (1879).

Courts Cannot Relieve.—The courts have no dispensing power to relieve from the penalty prescribed by law. Swain v. Phelps, 125 N. C. 43, 34 S. E. 110 (1899).

III. FALSE RETURN.

Penalty Enforced in Civil Action.—The action for $500 penalty for "false return," is properly sought to be maintained by civil action. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Power of Court to Allow Return to Be Amended.—In an action against a sheriff, for the penalty of $500 for a false return, as provided in this section, after the action was begun, the defendant, on affidavits, moved the court to be allowed to amend his return so as to speak the truth. The motion was allowed, and upon appeal the Supreme Court held that the power of the superior court judge to allow amendments in process, etc., is broad, both by statute and the inherent power of the court, and the ruling of the lower court was affirmed. Swain v. Burden, 124 N. C. 16, 32 S. E. 319 (1899).

Where a sheriff to whom a summons issued, returned it "served," and was sued for the $500 penalty for false return provided for by this section, the court permitted him, for proper reasons set out in his affidavit, to amend this return and the power of the court below to allow the amendment was sustained on appeal. Swain v. Burden, 124 N. C. 16, 32 S. E. 319 (1899); Swain v. Phelps, 125 N. C. 43, 34 S. E. 110 (1899).

When, in an action against a sheriff for a false return, the court permits such return to be amended, the plaintiff should note his exception, and, unless the amended return is admitted to be true, proceed to try the issue. An appeal before final judgment on such admission, or a verdict, is premature and will be dismissed. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

Plaintiff Need Not Name Other Party.—Any person may sue for the penalty imposed upon sheriffs by the section for a false return, and he need not mention in his complaint the other party, to whom the statute gives one half of the recovery. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888). See also, Martin v. Martin, 50 N. C. 346 (1858); Peebles v. Newsom, 74 N. C. 473 (1876).

Restricted to Civil Process.—The penalty of $500 imposed for a false return by the section is restricted to sheriffs, and false returns by them made to civil process. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888). See also, Martin v. Martin, 50 N. C. 346 (1858).

Element Essential to Liability.—In order to render a sheriff liable for a false return, under the section, falsehood must be found in the statement of facts in the return. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Mistake.—A return made by a sheriff, that is false in fact, although the officer was mistaken in the manner as to which he made his return will, nevertheless, subject him to the penalty for a false return. Albright v. Tapscott, 53 N. C. 473 (1862).

If a return be false in fact, inadvertence or mistake is no excuse or protection to the officer, although no intentional deceit was practiced. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Illustrations.—In an action for the penalty imposed for a false return the complaint stated, in substance, that an execution was placed in the sheriff's hands and by him levied on the goods of the defendant therein named, which goods the sheriff kept locked up for several days; that defendant in the execution, at the time of the levy, demanded that his exemptions be allotted to him; that defendant paid the sheriff $2.50 in part of the execution, while his goods were held under the levy; that after keeping said goods several days, and receiving the said $2.50, the sheriff returned said execution, "Levy made; fees demanded for laying off exemptions and not paid; no further action taken;" that said return was false in that it did not state that he had collected said $2.50 on the execution. Upon such a state of facts the failure to mention the payment of $2.50 in his return made the return defective, but such an omission does not render the sheriff liable to the penalty imposed for a false return. Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

Where a sheriff returns upon a fi. fa., two credits for money received, thereon at different times, and, suppressing a third credit, returns not satisfied, it was held that such return was false, and subjected him to the penalty of $500, under Rev. Code, ch. 105, § 17, now this section. Martin v. Martin, 50 N. C. 346 (1858).

Same—Return "Too Late to Hand."—Where a sheriff indosed truly the day on which he received a declaration in ejectment, returnable to a county court, and returned on the same "too late to hand," although five days intervened between the day indorsed, and the return day, it was held that he was not liable under 17th section, 105th chapter, of Rev. Code, now this section, to the penalty for making a false return. Hassel v. Latham, 52 N. C. 465 (1860).

Same—Return "Not Found."—The return of "Not to be found" on a capias is not true, because of the defendant's being out of the State at the time the return is made, if the officer had an opportunity of making the arrest previously, while the process was in his hands. Martin v. Martin, 50 N. C. 349 (1858). See also, Tomlinson v. Long, 53 N. C. 469 (1862); Harrell v. Warren, 100 N. C. 259, 6 S. E. 777 (1888).

A deputy sheriff having an order of arrest to be executed, went to the house of the person named therein, and, after reading to him the summons in the action, told him that he had an order of arrest for him. After some talk, the deputy left the bond with him, on his promise to call next day and fix the matter up. It was held that as the deputy did not have, or attempt to have within his control in any way the party named in the order, there was no arrest, and a return of the order "Not served" did not render the officer liable for a false return. State v. Buxton, 102 N. C. 129, 8 S. E. 774 (1889).

Same—Arrest.—Where a sheriff, having in hand an order of arrest against B., told B. that he "had better come and go with him to Jackson, and fix the matter there;" B. refused to go with him, and the sheriff left, without taking any further action, it was held that what passed did not constitute an arrest of B., and the sheriff was not liable for a false return, in that he returned on the order of arrest, "not served." State v. Buxton, 102 N. C. 129, 8 S. E. 774 (1889).

Statute of Limitations.—When an amercement was imposed upon a sheriff for a false return made more than six years previous, an action upon his official bond to recover the penalty was barred by the statute of limitations. State v. Barefoot, 104 N. C. 224, 10 S. E. 170 (1889).

IV. WRITS FROM JUSTICE'S COURT.

No Power to Amerce Sheriff of Another County.—Under the Act of 1874-'75, ch. 33, now this section, a justice of the peace has no power to amerce the sheriff of a county other than that in which he holds his court, for failure to make due return to process issued by such justice. He can only amerce the sheriff of his county when he fails to perform the duties imposed by that act. Boggs v. Davis, 82 N. C. 27 (1880).

Action for Failure of Sheriff to Serve Warrant.—The court may not regard an independent action as a motion in the original cause when the latter is not before it; and where the sheriff is liable for the penalty prescribed by this section, for failure to serve a warrant in an action before a justice of the peace, and the plaintiff brings an independent action for the recovery of the penalty before another justice, from whose judgment the defendant has appealed, and a trial de novo had in the superior court, it is error for the trial judge to regard the summons and complaint in the independent action as a motion in the cause under this section and proceed with the trial accordingly. Walker v. Odom, 185 N. C. 557, 118 S. E. 2 (1923).

When Constable Not Liable for Refusal to Serve.—A constable does not subject himself to the penalty of $100 by declining to receive process which, at the time it was tendered, he could not have executed ex. gr. process against a person then attending under subpoena before a commissioner. Fentress v. Brown, 61 N. C. 373 (1867).

Where Sheriff a Party.—An execution directed to a sheriff, who is a party, is null and void, and the sheriff cannot be amerced for neglecting or refusing to make a return thereon. Bowen v. Jones, 35 N. C. 25 (1851).

Where Sheriff's Motion for Nonsuit Properly Granted.—Plaintiffs instituted action against the sheriff and bondsman for damages caused by alleged false return of summons. The sheriff's return was regular upon its face, but each plaintiff testified that service was not made on him, but did not testify as to whether service was made on the other plaintiff, and there was no evidence corroborating plaintiffs' testimony. It was held that defendants' motion for judgment as of nonsuit was properly granted. Penley v. Rader, 208 N. C. 702, 182 S. E. 337 (1935).

§ 162-15. Sufficient notice in case of amercement.—In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court. (1871-2, c. 74, s. 4; Code, s. 446; Rev., s. 2818; C. S., s. 3937.)

Amercement and not a civil action, is the remedy given against a sheriff for not making "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N. C. 74, 11 S. E. 264 (1890).

When Rule Nisi Granted.—Where a prima facie case is made, either upon affidavit or other sufficient proof a rule nisi is granted as of course. Ex parte Schenck, 63 N. C. 601 (1869).

Immaterial Evidence.—On the trial of an action for the penalty, when the defendant sheriff offered to introduce in evidence the true returns of the proceeds of sale indorsed upon certain other executions, the evidence was immaterial and properly excluded. Finley v. Hayes, 81 N. C. 368 (1879).

Jurisdiction in Court to Which Process Returnable.—An action against a sheriff of a county other than that from which the process issued, for making a false return, is properly brought in the courts of the county to which that process was returnable. Watson v. Mitchell, 108 N. C. 364, 12 S. E. 836 (1891).

Amerced at Subsequent Term.—A sheriff may be amerced at a subsequent term to that at which the process was returnable, for not having made his return at a previous term. Hyatte v. Allison, 48 N. C. 533 (1856).

Return Prima Facie Correct.—The return or certificate of a ministerial officer, as to what he has done out of court, is only to be taken as prima facie true, and is not conclusive; it may be contradicted by any evidence and shown to be false, antedated, etc. Smith v. Lowe, 27 N. C. 197 (1844).

Nonpayment of Fees Does Not Excuse Return.—A sheriff is not required to execute process until his fees are paid or tendered by the person at whose instance the service is to be rendered; but this does not excuse him for a failure to make a return of the process. Jones v. Gupton, 65 N. C. 48 (1871).

Section 1-220.—On motion to set aside a judgment against defendant sheriff for an alleged failure to make due return of process, the facts of the instant case entitled him to relief under § 1-220. Francks v. Sutton, 86 N. C. 78 (1882).

Duties under C. C. P. and Old System.—The duties and liabilities of a sheriff in relation to the execution of process are nearly the same under the C. C. P. as under the old system but the mode of procedure for enforcing a judgment nisi against him is changed from a scire facias to a civil action, and the summons must be in the same court as the judgment, and must be returned to the regular term thereof. Jones v. Gupton, 65 N. C. 48 (1871).

§ **162-16. Execute summons, order or judgment.**—Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law. (C. C. P., s. 354; Code, s. 598; Rev., s. 2819; C. S., s. 3938.)

Execution from Justice's Court.—Execution from a justice's court must be directed to "any constable or other lawful officer of the county," and if it comes into the hands of the sheriff, he must obey it. McGloughan v. Mitchell, 126 N. C. 681, 36 S. E. 164 (1900).

When Addressed to Constable.—A constable cannot serve process addressed to the sheriff, nor can a sheriff serve process addressed to a constable. McGloughan v. Mitchell, 126 N. C. 681, 36 S. E. 164 (1900).

When Want of Jurisdiction Not Apparent.—It is well settled, that if a court issuing process has general jurisdiction to issue such process, and the want of jurisdiction does not appear upon the face of the paper, a sheriff and his assistants may justify under it. State v. Ferguson, 67 N. C. 219 (1872).

When Coroner Acts.—In an action wherein the sheriff is a party defendant it is proper that a summons issued against a codefendant should be addressed to and served by the coroner. Battle v. Baird, 118 N. C. 854, 24 S. E. 668 (1896).

The county commissioners may declare the office vacant, upon the insanity of the sheriff, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, but does not cast upon him the right to collect taxes. Somers v. Board, 123 N. C. 583, 31 S. E. 873 (1898).

§ **162-17. Liability of outgoing sheriff for unexecuted process.**—Any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars, if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties. (R. C., c. 105, s. 25; Code, s. 2088; Rev., s. 2820; C. S., s. 3939.)

Cross Reference.—See § 162-14 and notes thereto.

When Not to Make Return.—A sheriff, to whom a writ has been delivered, but who goes out of office before the return day of the writ, has no power to make the return on it, and therefore is not liable to amercement for not doing so. State v. Woodside, 29 N. C. 296 (1847).

Delivery to Successor.—It is the duty of the sheriff, going out of office, to deliver all the processes remaining in his hands to his successors. State v. Woodside, 29 N. C. 296 (1847).

§ 162-18. Payment of money collected on execution.—In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof; he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars, to be collected as other penalties. (Code, s. 2080; Rev., s. 2821; C. S., s. 3940.)

The auditing of account of sheriff by county commissioners is prima facie evidence of its correctness, and it is impeachable only for fraud or special error. Williamson v. Jones, 127 N. C. 178, 37 S. E. 202 (1900); Commissioners v. Kenan, 127 N. C. 181, 37 S. E. 997 (1900).

§ 162-19: Repealed by Session Laws 1953, c. 973, s. 3.

§ 162-20. Publish list of delinquent taxpayers.—Whenever any sheriff or tax collector shall be credited on settlement with any tax or taxes by him returned as insolvent, dead or removed, he shall forthwith make publication at the courthouse door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county. Any sheriff or tax collector failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than one hundred dollars. (1876-7, c. 78, ss. 1, 2, 3; Code, s. 2092; Rev., ss. 2826, 3587; C. S., s. 3942.)

§ 162-21. Liability for escape under civil process.—When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment, for not performing a judgment for the payment of any sum of money, and shall willfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the execution or attachment, and damages for detaining the same. (13 Edw. I, c. 11; 1777, c. 118, ss. 10, 11, P. R.; R. C., c. 105, s. 20; Code, s. 2083; Rev., s. 2823; C. S., s. 3943.)

I. General Considerations.
II. Liability of Sheriff.
III. Actions.

I. GENERAL CONSIDERATIONS.

Escape Defined.—An escape is defined to be when one who is arrested gains his liberty before he is delivered in due course of law. State v. Ritchie, 107 N. C. 857, 12 S. E. 251 (1890).

An escape has been effected, in the criminal sense of the law, in the language of an eminent author in a work on criminal law, "when one who is arrested, gains his liberty before he is delivered in due course of law." 1 Russell on Crimes, 467. It is defined in brief words by another writer as "the departure of a prisoner from custody." 2 Whar. Cr. Law, § 2606; State v. Johnson, 94 N. C. 924 (1886).

It is not an escape in a sheriff to permit a debtor committed under a ca. sa. to remain in prison with the door of the prison open, unless such debtor passes out of the prison. Currie v. Worthy, 47 N. C. 104 (1854).

Release before Commitment.—If the sheriff arrests a person on mesne process and, before commitment to prison, allows him to go at large, this is not an escape, but the sheriff is liable as special bail. State v. Falls, 63 N. C. 188 (1869).

Two Kinds of Escape.—There are only two kinds of escape known to our law, of a prisoner confined for debt: one voluntary and the other negligent, except where the prisoner has escaped by the act of God or of the enemies of our country. Adams v. Turrentine, 30 N. C. 147 (1847).

Same—Difference in Liability.—The only difference as to the liability of the officer between the two kinds of escape is that in the case of voluntary escape he is liable absolutely; in the case of negligent escape he has a right to retake the prisoner, and, if he does retake him upon fresh pursuit, he is not liable to an action of debt brought after such recapture, and when he has the prisoner in custody. Adams v. Turrentine, 30 N. C. 147 (1847).

Negligent Escape.—The meaning of the term "negligent escape" in our statute is the same that was given to that term at the common law. Adams v. Turrentine, 30 N. C. 147 (1847).

At Common Law and under Statutes.—At common law a sheriff who had a person in actual custody under legal authority and suffered him to go at large was guilty of an escape; and in civil cases the only remedy for the injured was an action on the case. Various statutes have increased the remedies of the party injured, and changed in some respects the liability of the sheriff. State v. Falls, 63 N. C. 188 (1869).

Not Dependent upon § 162-14.—It would seem that this section is in nowise dependent upon § 162-14. In the case of Richardson v. Wicker, 80 N. C. 172 (1879), the court says: "The imposition of a penalty for a want of official diligence is a matter of State regulation, and it would be no impairment of the plaintiff's right to collect his debt if the legislature should repeal the amercement law altogether." Washington Toll Bridge Co. v. Commissioners, 81 N. C. 491 (1879).

Recapture as Defense.—Where a prisoner confined for debt escapes, the officer in an action against him for the escape, can only excuse himself by showing that he has not only made fresh pursuit, but also that he has actually recaptured the prisoner before suit brought. Without this, fresh pursuit will not excuse the officer, even though the prisoner die before the officer has it in his power, by due diligence, to recapture him. Whicker v. Roberts, 32 N. C. 485 (1849).

Same—Made on General Issue.—In this State the defense of fresh pursuit and recapture need not be by plea, but may be made on the general issue. Whicker v. Roberts, 32 N. C. 485 (1849).

II. LIABILITY OF SHERIFF.

General Rule as to Liability.—In all cases of escape after a debtor is committed to jail, the sheriff is liable, however innocent he may be, unless the escape has been occasioned by the act of God or the public enemies. Rainey v. Dunning, 6 N. C. 386 (1818).

Escape of Insolvent Surrendered in Open Court.—To render a sheriff liable for the escape of an insolvent, surrendered in open court, it is necessary to show that such insolvent was committed to the sheriff's custody by an order of the court. A mere prayer to that effect will not be sufficient. State v. McKee, 47 N. C. 379 (1885).

Release on Bond to Appear and Take Insolvent's Oath.—Where a defendant has been arrested upon mesne process and gives bail, and, after judgment, the bail surrenders him to the sheriff, out of term-time, no execution having been issued on the judgment nor any committitur prayed by the plaintiff, if the sheriff releases him upon a bond to appear at court and take the benefit of the insolvent law, the sheriff is liable for an escape. State v. Ellison, 31 N. C. 261 (1848).

When Directed Not to Serve Ca. Sa. on One of Two Defendants.—When a judgment is obtained against two or more, and no bail bond has been taken from either of the defendants in the suit, and the sheriff, who has thus become bail for all, after the rendition of the judgment and the issuing of the ca. sa., is directed by the plaintiff not to serve the ca. sa. on one of the defendants, he is still liable, as bail, for not surrendering the other defendant. Jackson v. Hampton, 32 N. C. 579 (1849).

When Prisoner Committed on Mesne Process.—A sheriff is not liable as special bail, after he has committed a defendant on mesne process, though such defendant be permitted by him to go at large. Buffalow v. Hussey, 44 N. C. 237 (1852).

A sheriff having permitted one arrested by him upon mesne process in a civil action, to go into an adjoining room, from which he escaped, was guilty of an escape. Winborne & Bro. v. Mitchell, 111 N. C. 13, 15 S. E. 882 (1892).

Prisoner Discharged as Insolvent.—Where a scire facias was issued against a sheriff to charge him as special bail for a person sued at the instance of the plaintiff, and who had been, for want of bail, committed to jail in the sheriff's county, and afterwards discharged as an insolvent by two magistrates, it was held that the sheriff was not liable as special bail. Buffalow v. Hussey, 44 N. C. 237 (1853).

Return Sufficient to Charge Sheriff.—The words "executed P. R. T., D. Sheriff," indorsed on a capias, which, duly issued, and came to the hands of the sheriff, are so much a due and legal return, as to make the sheriff liable as special bail, on the failure of him or his deputy, to take a bail bond. Washington v. Vinson, 49 N. C. 380 (1857).

When Sheriff Fails to Take Bail.—The sheriff is said to fail to take bail when the paper returned by him as a bail bond is so defective and imperfect as to be adjudged not to be such. Adams v. Jones, 60 N. C. 198 (1864).

Same—Exceptions and Notice.—If the sheriff fails to take bail, the plaintiff need not file exceptions nor give notice to fix him as bail. Adams v. Jones, 60 N. C. 198 (1864).

Failure to Handcuff as Negligence Per Se.—A sheriff's liability for permitting an escape depends on the circumstances of the particular case, and failure to handcuff does not constitute negligence per se. State v. Hunter, 94 N. C. 829 (1886).

May Become Special Bail.—If the person, after arrest, get at large by the negligence of the sheriff and against his will, he may by his return elect to become special bail. State v. Falls, 63 N. C. 188 (1869).

III. ACTIONS.

Negligent Escape When No Actual Negligence.—An action of debt will lie against a sheriff under our statute for a negligent escape of a prisoner confined for debt, even though there was no actual negligence. Adams v. Turrentine, 30 N. C. 147 (1847).

Damages Really Sustained.—In an action of debt on a sheriff's bond for the escape of a debtor imprisoned under a ca. sa., the jury are not bound to give the whole sum due from such debtor, but should give the damages really sustained by the escape. State v. Eure, 53 N. C. 320 (1861), in which the case of Governor v. Matlock, 8 N. C. 425 (1821), is cited and approved.

Objection as to County by Plea in Abatement.—In an action for an escape, if the defendant wishes to except, upon the ground of its being a penal action, that it is brought in the wrong county, he must make the objection by plea in abatement. Whicker v. Roberts, 32 N. C. 485 (1849).

When Creditor Will Not Charge Party in Execution.—After surrender, if the creditor, upon reasonable notice, will not charge the party in execution, either a habeas corpus or a supersedeas would be issued by the court. State v. Ellison, 31 N. C. 261 (1848).

§ 162-22. Custody of jail.—The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof. (R. C., c. 105, s. 22; Code, s. 2085; Rev., s. 2824; C. S., s. 3944.)

Duties of Jailer.—The duties of a jailer are those prescribed by statute and those recognized at common law. Gowens v. Alamance County, 216 N. C. 107, 3 S. E. (2d) 339 (1939).

Jailer Bound Only to Sheriff.—Where a sheriff arrested a man on a ca. sa. and committed him to jail, in custody of the jailer, and the prisoner escaped, it was held that without a bond of indemnity, the jailer was only bound to the sheriff for want of fidelity or due care in the discharge of his duty. Turrentine v. Faucett, 33 N. C. 652 (1850).

Sheriff May Take Jailer's Bond.—A sheriff has a right to take a bond from the jailer to indemnify him for all losses to which he may be subjected by the escape of a prisoner while in custody of the jailer. Turrentine v. Faucett, 33 N. C. 652 (1850).

Negligence of Deputy in Charge of Jail.—Where the evidence is sufficient to be submitted to the jury as to the negligence of a deputy in charge of a jail in causing injury to a prisoner in closing the cell door on the prisoner's thumb, it is sufficient to be submitted to the jury as to the liability of the sheriff, since the act of the deputy is within the scope of his authority and in the line of his duty, and the liability of the sheriff for acts of his deputy is governed by the law applicable to the law of principal and agent. Davis v. Moore, 215 N. C. 449, 2 S. E. (2d) 366 (1939).

Cited in Sutton v. Williams, 199 N. C. 546, 155 S. E. 160 (1930).

§ 162-23. Prevent entering jail for lynching; county liable.—When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this State. (1893, c. 461, s. 7; Rev., s. 2825; C. S., s. 3945.)

§ 162-24. Not to farm office.—No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars, one-half to the use of the county and the other half to the person suing for the same. (23 Hen. VI, c. 10; R. C., c. 105, s. 21; Code, s. 2084; Rev., s. 2828; C. S., s. 3946.)

A sheriff may employ a deputy to assist him, but he cannot delegate his authority to another. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899).

Letting to Farm.—**The section prohibits a sheriff from letting to farm, in any manner, his county, or any part of it.** Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899).

Cannot Be Subject of Bargain and Sale.—The public has an interest in the proper performance of their duties by public officers, and would be prejudiced by agreements tending to impair an officer's efficiency or in any way interfere with or disturb the due execution of the duties of the office. The office of sheriff and tax collector is one of public confidence and fidelity to a public trust, and cannot be a matter of bargain and sale. It requires good faith and duty. Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899).

Traffic in public offices is against good morals and contrary to public policy. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

To Secure Appointment, or Expenses for Attempting.—Not only an agreement by A to pay to B, a public officer, an amount equal to the emoluments of the unexpired term of his office in consideration of his resignation and his influence to secure the appointment of A to the office is void, but likewise an agreement to compensate anyone for or to pay the expenses of anyone in attempting to secure the appointment. Basket v. Moss, 115 N. C. 448, 20 S. E. 733 (1894).

§ **162-25. Obligations taken by sheriff payable to himself.**—The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case and other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services and the allowance given and provided by law. (1777, c. 118, s. 8, P. R.; R. C., c. 105, s. 19; Code, s. 2082; Rev., s. 2829; C. S., s. 3947.)

Chapter 162A.

Water and Sewer Authorities.

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§ **162A-1. Title.**—This chapter shall be known and may be cited as the "North Carolina Water and Sewer Authorities Act." (1955, c. 1195, s. 1.)

Cross References.—As to joint water supply facilities by municipalities, see §§ 160-191.6 to 160-191.10.

§ **162A-2. Definitions.**—As used in this chapter the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "authority" shall mean an authority created under the provisions of this chapter or, if such authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this chapter to the authority shall be given by law.

(2) The word "Board" shall mean the Board of Water Commissioners of the State of North Carolina or the Board, Body or Commission succeeding to the principal functions thereof or to whom the powers given by this chapter to the Board shall be given by law.

(3) The word "cost" as applied to a water system or a sewer system shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the authority, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses, including reasonable provision for working capital, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the authority or by any political subdivision prior to the issuance of bonds under the provisions of this chapter in connection with any of the foregoing items or cost may be regarded as a part of such cost.

(4) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the political subdivision are vested.

(5) The word "improvements" shall mean such repairs, replacements, addi-

tions, extensions and betterments of and to a water system or a sewer system as are deemed necessary by the authority to place or to maintain such system in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the authority and for which no existing service is being rendered.

(6) The word "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district or other political subdivision or public corporation of this State now or hereafter incorporated.

(8) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such surface or ground water or household and industrial wastes as may be present.

(9) The term "sewage disposal system" shall mean and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(10) The word "sewers" shall include mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the authority.

(11) The term "sewer system" shall embrace both sewers and sewage disposal systems and all property, rights, easements and franchises relating thereto.

(12) The term "water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. (1955, c. 1195, s. 2.)

§ 162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.—(a) The governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this chapter. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than ten days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held thereof. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;
(2) A statement that such authority is organized under this chapter;
(3) The names of the organizing political subdivisions; and
(4) The names and addresses of the first members of the authority appointed by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this chapter shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this chapter and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this chapter.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1955, c. 1195, s. 3.)

§ 162A-4. Withdrawal from authority; joinder of new subdivision.—Whenever an authority has been organized under the provisions of this chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located.

Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in § 162A-3. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under § 162A-3 in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision.

A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, a certified copy of a resolution of the authority consenting to such joining (except in cases where such consent is unnecessary), shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to the provisions of this chapter and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4.)

§ 162A-5. Members of authority; organization; quorum.—Each authority organized under this chapter shall consist of the number of members as may be agreed upon by the participating political subdivisions, such members to be selected by the respective participating political subdivisions, but in all cases at least one member appointed by the governing body of each of the participating political subdivisions and one member appointed by the Governor of North Carolina. A proportionate number (as nearly as can be) of the members of the authority first appointed shall have terms expiring two years, four years and six years, respectively, from the date on which the creation of the authority becomes effective. The terms of the individual members of the authority first appointed shall be selected by lot at the first meeting of all the members thereof. Successor members and members appointed by political subdivisions subsequently joining the authority shall each be appointed for a term of six years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member of the authority may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision or by the Governor of North Carolina appointing the member whose successor is to be appointed. Any member of the authority may be removed for cause by the governing body of the political subdivision or the Governor of North Carolina appointing him.

Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority shall serve without compensation but shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5.)

§ 162A-6. Powers of authority generally.—Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of § 162A-7, hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, purchase or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this chapter shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this chapter;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, co-partnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14) To do all acts and things necessary or convenient to carry out the powers granted by this chapter. (1955, c. 1195, s. 6.)

§ 162A-7. Prerequisites to acquisition of water, etc., by eminent domain.—(a) No authority shall institute proceedings in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto without first securing from the Board a certificate authorizing such acquisition.

(b) An authority seeking such certificate shall petition the Board therefor in writing, which petition shall include a description of the waters or water rights involved, the plans for impounding or diverting such waters, and the names of riparian owners affected thereby insofar as known to the authority. Upon receipt of such petition, the Board shall hold public hearing thereon after giving at least thirty days' written notice thereof to known affected riparian owners and notice published at least once each week for two successive weeks in a newspaper or newspapers of general circulation in each county in which lower riparian lands lie.

(c) The Board shall issue certificates only to projects which it finds to be consistent with the maximum beneficial use of the water resources in the State and shall give paramount consideration to the State-wide effect of the proposed project rather than its purely local or regional effect. In making this determination, the Board shall specifically consider:

(1) The necessity of the proposed project;
(2) Whether the proposed project will promote and increase the storage and conservation of water;
(3) The extent of the probable detriment to be caused by the proposed project to the present beneficial use of water in the affected watershed and resulting damages to present beneficial users;
(4) The extent of the probable detriment to be caused by the proposed project to the potential beneficial use of water on the affected watershed;
(5) The feasibility of alternative sources of supply to the petitioning authority and the comparative cost thereof;
(6) The extent of the probable detriment to be caused by the use of alternative sources of supply to present and potential beneficial use of water on the watershed or watersheds affected by such alternative sources of supply;
(7) All other factors as will, in the Board's opinion, produce the maximum beneficial use of water for all in all areas of the State affected by the proposed project or alternatives thereto.

Upon the considerations above set forth, the Board may grant its certificate in whole or in part or it may refuse the same.

(d) At the public hearing provided for in subsection (b) above the Board shall hear evidence from the authority and any others in support of its petition and from all persons opposed thereto.

(e) At any hearing authorized by this section, the Board shall have power to administer oaths; to take testimony; to issue subpoenas and compel the attendance of witnesses, which shall be served in the same manner as subpoenas issued by the superior courts of the State; and to order the taking of depositions in the same manner as depositions are taken for use in the superior court.

(f) Any final order or decision of the Board in administering the provisions of this section shall be subject to judicial review at the instance of any person or authority aggrieved by such order or decision by complying with the provisions of article 33, chapter 143 of the General Statutes of North Carolina. (1955, c. 1195, s. 6½.)

§ **162A-8. Revenue bonds generally.**—Each authority is hereby authorized to issue, at one time or from time to time, revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging or equipping any water system or sewer system or any part or any combination thereof. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Such bonds shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by that Commission, except that the said Commission may sell any bonds issued pursuant to this chapter at private sale and without advertisement, and for such price, with the consent of the authority, as it may determine to be for the best interests of the authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum (5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery, except that such interim receipts or temporary bonds shall be approved by the Local Government Commission in the same manner as the definitive bonds are approved by said Commission under the provisions of this chapter. Delivery of interim receipts or temporary bonds or of the bonds authorized pursuant to this chapter to the purchaser or order, or delivery of definitive bonds in exchange for interim receipts or temporary bonds, shall be made in the same manner as municipal bonds may be delivered under the provisions of the Local Government Act. The authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Excepting the requirement herein that approval of the Local Government Commission shall be obtained, bonds may be issued under the provisions of this chapter without obtaining the consent of any other commission, board, bureau or agency of the State or of any political subdivision, and without any other proceeding or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the State or of any political subdivision or a pledge of the faith and credit of the State or of any political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1955, c. 1195, s. 7.)

§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.—Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by such authority. Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the State or of any political subdivision. Such rates, fees and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times

(1) To pay the cost of maintaining, repairing and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this chapter as the same shall become due and payable and to provide reserves therefor.

Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may, in addition to any other remedies which it may have

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges, and

(2) At the expiration of thirty days after any such rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority. (1955, c. 1195, s. 8.)

§ **162A-10. Trust agreements securing bonds; pledges of revenues.**—In the discretion of the authority, each or any issue of revenue bonds may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received, but shall not convey or mortgage any water system or sewer system or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition, construction, reconstruction, improvement, maintenance, repair, operation and insurance of any such system or systems, the fixing and revising of rates, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such acquisition, construction, reconstruction or operation. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the authority may deem reasonable and proper for the security of the bondholders. Except as in this chapter otherwise provided, the authority may provide for the payment of the proceeds of the sale of the bonds and the revenues of any water system or sewer system or part thereof to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this chapter shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. (1955, c. 1195, s. 9.)

§ **162A-11. Moneys received deemed trust funds.**—All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution or trust agreement may provide. (1955, c. 1195, s. 10.)

§ **162A-12. Bondholder's remedies.**—Any holder of revenue bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by a water system or sewer system. (1955, c. 1195, s. 11.)

§ **162A-13. Refunding bonds.**—Each authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The authority is further authorized to issue from time to time revenue bonds of the authority for the combined purpose of

(1) Refunding any revenue bonds or revenue refunding bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of acquiring or constructing any additional water system or sewer system or part thereof, or any improvements, extensions or enlargements of any water system or sewer system.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable. (1955, c. 1195, s. 12.)

§ **162A-14. Conveyances and contracts between political subdivisions and authority.**—The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water

system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or corporation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to by the governing body of such political subdivision and the authority:

  a. For the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;

  b. For the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities; and

  c. For shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract;

(3) To fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and

(4) In its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this chapter; provided, however, that before any contract or agreement under subdivision (1) of this section shall become effective as to a political subdivision such contract or agreement shall be submitted to and approved by a majority of the qualified electors voting at an election held under the election laws applicable to such political subdivision. (1955, c. 1195, s. 13.)

§ 162A-15. Services to authority by private water companies; records of water taken by authority; reports to Board of Water Commissioners.—Each private water company which is supplying water to the owners, lessees or tenants of real property which is or will be served by any sewer system of an authority is authorized to act as the billing and collecting agent of the authority for any rates, fees or charges imposed by the authority for the services rendered by such sewer system. Any such company shall, if requested by an authority, furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The authority shall pay to such water company the reasonable additional cost of clerical services and other expenses incurred by the water company in rendering such services to the authority. The authority shall by means of suitable measuring and recording devices and facilities record the quantity of water taken daily by it from any stream or reservoir and make monthly reports of such daily recordings to the Board of Water Commissioners of the State of North Carolina. (1955, c. 1195, s. 14.)

§ **162A-16. Contributions or advances to authority by political subdivisions.**—Any political subdivision is hereby authorized to make contributions or advances to an authority, from any moneys which may be available for such purpose, to provide for the preliminary expenses of such authority in carrying out the provisions of this chapter. Any such advances may be repaid to such political subdivisions from the proceeds of bonds issued by such authority under this chapter. (1955, c. 1195, s. 15.)

§ **162A-17. Chapter regarded as supplemental.**—This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1955, c. 1195, s. 16.)

§ **162A-18. Actions against authority by riparian owners.**—Any riparian owner alleging an injury as a result of any act of an authority created under this chapter may maintain an action for relief against the acts of the authority either in the county where the lands of such riparian owner lie or in the county in which the principal office of the authority is maintained. (1955, c. 1195, s. 16½.)

§ **162A-19. Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this chapter. (1955, c. 1195, s. 17.)

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ARTICLE 1.

In General.

§ **162B-1. Designated emergency location of government.**—The governing body of each political subdivision of this State is hereby authorized to designate by ordinance, resolution or other manner, alternate sites or places, within or without the territorial limits of such political subdivision and within or without this State, as the emergency location of government. (1959, c. 349.)

§ **162B-2. Emergency meetings.**—Whenever the Governor and Council of State acting together declare an emergency to exist by reason of actual or impending hostile attack upon the State of North Carolina and, due to the emergency so declared, it becomes imprudent or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this State is hereby authorized to meet from time to time upon call of the presiding officer or a majority of the members thereof at the designated emergency location of government during the period of the emergency and until the emergency is declared terminated by the Governor and Council of State. (1959, c. 349.)

§ **162B-3. Emergency public business; nature and conduct.**—Whenever the public business of any political subdivision is being conducted at a designated emergency location outside the territorial limits thereof, the members of the governing body may exercise such executive and legislative powers and functions as are pertinent to continued operation of the local government upon return to within the respective political subdivision. Any action taken by any local governing body at a designated emergency location shall apply and be effective only within the territorial limits of the political subdivision which such governing body represents. During the period of time in which the public business is being conducted at a designated emergency location, the governing body may, when emergency conditions make impossible compliance with legally prescribed procedural requirements relating to the conduct of meetings and transaction of business, waive such compliance by adoption of an ordinance or resolution reciting the facts and conditions showing the impossibility of compliance. (1959, c. 349.)

§ **162B-4. Provisions of article control over local law.**—The provisions of this article shall be effective in the event it shall be employed notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith. (1959, c. 349.)

ARTICLE 2.

Emergency Interim Succession to Local Offices.

§ **162B-5. Short title.**—This article shall be known and may be cited as the North Carolina "Emergency Interim Local Government Executive Succession Act of 1959." (1959, c. 314, s. 1.)

§ **162B-6. Policy and purpose.**—Because of the existing possibility of attack upon the State of North Carolina of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of local government through legally constituted leadership, authority and responsibility in offices of political subdivisions of the State of North Carolina; to provide for the effective operation of local governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for emergency interim succession to governmental offices of political subdivisions in the event the incumbents thereof and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices (hereinafter referred to as deputies) are unavailable to perform the duties and functions of such offices. (1959, c. 314, s. 2.)

§ **162B-7. Definitions.**—Unless otherwise clearly required by the context, as used in this article:

(1) "Attack" means any attack or series of attacks by an enemy of the United States upon the State of North Carolina causing, or which may cause, substantial damage or injury to civilian property or persons in the State in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

(2) "Emergency interim successor" means a person designated pursuant to this article, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(3) "Office" includes all local offices, the powers and duties of which are defined by statutes, charters and ordinances.

(4) "Political subdivision" includes counties, cities, towns, townships, districts, authorities and other municipal corporations and entities whether organized and existing under charter or general law.

(5) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office. (1959, c. 314, s. 3.)

§ **162B-8. Enabling authority for emergency interim successors for local offices.**—With respect to local offices for which the governing bodies of cities, towns, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this article. (1959, c. 314, s. 4.)

§ **162B-9. Emergency interim successors for local officers.**—The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to counties, cities, towns and townships as well as school, fire, drainage and other municipal corporate districts) not included in § 162B-8. Such governing bodies, pursuant to such regulations as they may adopt, shall upon approval of this article, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The local governing body shall review and revise, as necessary, designations made pursuant to this article to insure their current status. The governing body will designate a sufficient number of persons so that there will be not less than three, nor more than seven, deputies or emergency interim successors or combination thereof at any time. In the event that any officer of any political subdivision (or his deputy provided for pursuant to law) is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or statutes; or until the officer (or his deputy or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office. (1959, c. 314, s. 5.)

§ **162B-10. Formalities of taking office.**—At the time of their assumption of office, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office. (1959, c. 314, s. 6.)

§ **162B-11. Period in which authority may be exercised.**—Emergency interim successors, authorized to act pursuant to this article, are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the State of North Carolina, as defined herein, has occurred. The local governing body, by a duly adopted resolution, may at any time terminate the authority of said emergency interim successors to exercise the powers and discharge the duties of office as herein provided. (1959, c. 314, s. 7.)

§ **162B-12. Removal of designees.**—Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this article, including § 162B-11 hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause. (1959, c. 314, s. 8.)

§ **162B-13. Disputes.**—Any dispute concerning a question of fact arising under this article with respect to an office in any political subdivision shall be adjudicated by the local governing body and their decision shall be final. (1959, c. 314, s. 9.)

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SUBCHAPTER I. GENERAL ELECTIONS.

ARTICLE 1.

Political Parties.

§ 163-1. Political party defined; creation of new party.—A political party within the meaning of the election laws of this State shall be:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, in the State at least ten per cent of the entire vote cast therein for Governor, or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections by twelve o'clock noon, on or before the first day of July preceding the day on which a general State election is held petitions signed by ten thousand persons who are at that time registered and qualified voters in this State, declaring their intention to organize a new State political party, the name of which party shall be stated on the petitions together with the name and address of the State chairman thereof, and also there shall be set forth on the petitions a declaration of their intention of participating in the next succeeding election and affiliating with said new State political party by voting for the nominees thereof. The signatures of the persons signing such petitions shall be proven before some officer authorized to take acknowledgments of deeds and other instruments which may be recorded and such acknowledgments certified by such officer, or the genuineness of such signatures shall be proven by the oath and examination before such officer by a person in whose presence the petitions were signed and such proof certified by such officer. Such petitions must be accompanied by certificates signed by the chairman of the county boards of elections in the several counties in which signatures to the petitions are obtained, certifying that the signatures on the petitions have been checked against the registration books and showing the number and indicating by check marks on the petitions the names of the petitioners who are duly qualified and registered voters in such county. The group of petitioners shall pay to the chairman of the county boards of elections who check the signatures on the petitions a fee of five cents for each name checked on the petitions.

No such group of petitioners shall assume a name or designation which shall be so similar, in the opinion of the State Board of Elections, to that of an existing political party as to confuse or mislead the voters at an election, and which name or designation shall not contain the same word that appears in the name or designation of any existing State political party. When any new political party has qualified for participation in an election as herein required, and has furnished to the State Board of Elections by the first day of August prior to the election the names of such of its nominees named in a convention of such party, for State, congressional and national offices as is desired to be printed on the official ballots, it shall be the duty of the State Board of Elections to cause to be printed on the official ballots furnished by it to the counties the names of such nominees. No names of any candidates of any new party shall be printed on the county ballots in any county for the first election held after the filing of such petitions. When any political party fails to cast ten per cent of the total vote cast at any election for Governor or for presidential electors, it shall cease to be a political party within the meaning of this chapter: Provided, that notwithstanding any other provision of this section, any group of voters which at the 1948 general election polled for its candidates for presidential electors in the State at least three per cent of the total vote cast therein for presidential electors shall be deemed to be a political party within the meaning of the election and primary laws of this State until the regular general election of 1952 is held. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1.)

Cross Reference.—As to definition of political party for primary elections, see § 163-144.

Editor's Note.—The 1949 amendment rewrote this section. Among other changes, the 1949 amendment to this section wrote into it a number of administrative regulations adopted by the State Board of Elections in 1948, some of which were found in States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948), to be repugnant to the intention of the law as then written. 27 N. C. Law Rev. 455.

See 11 N. C. Law Rev. 226, for review and comment on this section. For note on definition of political parties, see 11 N. C. Law Rev. 148 et seq.

For case law survey on elections, see 41 N. C. Law Rev. 433.

This chapter repeals prior laws on the same subject. Window v. Morton, 118 N. C. 486, 24 S. E. 417 (1896).

Applicable to Municipal Elections.—The machinery provided by this chapter for ascertaining and declaring the successful candidate in an election applies to all municipal elections. State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

This section confers upon any qualified voter the legal right to sign a petition for the creation of a new political party irrespective of whether such voter has participated in the primary election of an existing political party during the year in which the petition is signed, and regulations of the State Board of Elections are invalid if they undertake to establish and enforce the rule that a qualified voter is ineligible to join in a petition for the creation of a new political party during a year in which he has voted in the primary election of an existing political party. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

The primary laws have no application to new political parties created by petition under this section. By express legislative declaration, such laws apply only to existing political parties "which, at the last preceding general election, polled at least three (now ten) per cent of the total vote cast therein for" Governor, or for presidential electors. The law permits a new political party created by statutory petition to select its candidates in its own way. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Duty of State Board of Elections.—Upon the filing of a petition under this section for the creation of a new political party, it is the duty of the State Board of Elections, in the first instance, to determine whether the petition is in accordance with the statutory requirements. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948). Note effect of 1949 amendment.

As § 163-151 specifies that ballots for use in general elections shall be printed and delivered to the county boards of elections "at least thirty days previous to the date of elections," the indisputable purpose of the provision of this section as it stood prior to the 1949 amendment concerning the time for filing a petition for the creation of a new political party was to afford the State Board of Elections approximately sixty days as the time in which to determine the sufficiency of the petition and to print ballots for use in the general election bearing the names of the nominees of the new political party in the event the petition for its creation was found to conform to the statute. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Notice and Hearing Required before Rejection of Petition.—Manifestly the statutes creating the State Board of Elections and defining its duties contemplate that the Board shall give petitioners for the creation of a new political party under this section notice and an opportunity to be heard in support of their petition before rejecting it or adjudging it insufficient. Indeed, notice and hearing in such case are necessary to meet the constitutional requirement of due process of law. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

ARTICLE 2.

Time of Elections.

§ 163-2. For State officers.—On Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred and four, and every four years thereafter, an election shall be held in the several election precincts in each county for the following officers: Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, and other State officers whose terms last for four years, and at said time and every two years thereafter, elections shall be held in the several election precincts in each county for other State officers whose election is not otherwise provided for by law. (1901, c. 89, s. 3; Rev., s. 4293; C. S., s. 5914.)

Cross Reference.—See § 147-4.

§ **163-3. For presidential electors.**—On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand nine hundred and eight, and every four years thereafter, or on such days as the Congress of the United States shall have directed, a poll shall be opened in each of the precincts of the State for the election of electors of President and Vice-President of the United States, the number of whom is to be equal to the number of Senators and Representatives in Congress to which this State may be entitled, and the persons shall be electors for the State as aforesaid, and the voting place in each ward or precinct shall be the same as in elections for members of the General Assembly, unless changed by the county board of elections. (1901, c. 89, s. 77; Rev., s. 4294; C. S., s. 5915.)

§ **163-4. For congressmen, legislators, county officers, and solicitors.**—On the Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred six, and every two years thereafter, an election shall be held in the several election precincts in each county for members of the House of Representatives of the Congress of the United States in the several districts, and members of the General Assembly for their respective counties and districts. At the same time and in the same manner as members of the General Assembly are elected, subject to whether the term is for two years or four as by law provided, an election shall be held in each county for a clerk of the superior court, register of deeds, sheriff, coroner, county surveyor, county commissioners, where the county commissioners are elected by the people, and in such counties as have one, a county treasurer, and other officers; and at such times an election shall be held in the several solicitorial districts for the office of solicitor. (Const., art. 4, s. 24; 1901, c. 89, s. 1; Rev., s. 4296; C. S., s. 5917; 1935, c. 362; 1943, c. 134, s. 4.)

Editor's Note.—The 1943 amendment substituted "solicitorial districts" for "judicial districts" near the end of the section.

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

§ **163-5. For township offices.**—On the first Tuesday after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every two years thereafter, an election shall be held in each township for the office of constable, and also for justices of the peace in such counties as elect them by a vote of the people, and all other officers elected by a vote of the township. (1901, c. 89, s. 2; Rev., s. 4297; C. S., s. 5918.)

Cross Reference.—As to municipal elections, see § 160-29 et seq.

Creation of New Township—Election upon Reasonable Notice.—Where the legislature has created a new township and the time for election has passed, as the public good requires the offices to be immediately filled, the commissioners may order an election upon reasonable notice. Grady v. County Comm., 74 N. C. 101 (1876).

§ **163-6. Filling vacancies for members of General Assembly.**—If a vacancy shall occur in the General Assembly by death, resignation or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election. (1901, c. 89, s. 74; Rev., s. 4298; C. S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1.)

Editor's Note.—The 1947 amendment added the former second paragraph.

The 1963 amendment rewrote this section.

§ 163-7. For vacancies in State offices.—Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following offices, to wit, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Solicitor, Justices of the Supreme Court, judges of the superior court, or any other State officer elected by the people, the same shall be filled by elections, to be held in the manner and places and under the same regulations and rules as prescribed for general elections, at the next regular election for members of the General Assembly which shall occur more than thirty days after such vacancy, except as otherwise provided for in the Constitution. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C. S., s. 5920.)

Section Inapplicable to Governor and Lieutenant-Governor.—When the General Assembly enacted this section, it clearly recognized that the Governor and the Lieutenant-Governor were not subject to its provisions and that is the reason the section contains the provision, "except as otherwise provided for in the Constitution." Thomas v. State Board of Elections, 256 N. C. 401, 124 S. E. (2d) 164 (1962).

ARTICLE 3.

State Board of Elections.

§ 163-8. State Board of Elections; appointment; term of office.—All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1953, or when their successors in office are appointed and qualified. The State Board of Elections shall consist of five electors whose terms of office shall begin on May 1, 1953, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of said Board shall be the same political party. (1901, c. 89, s. 5; Rev., s. 4300; C. S., s. 5921; 1933, c. 165, s. 1; 1953, c. 428.)

Editor's Note.—The 1933 amendment changed this section and those following by increasing the term of office from two to four years and consolidating a number of provisions of the old law. See 11 N. C. Law Rev. 227.

The 1953 amendment rewrote this section.

§ 163-9. Meetings of Board; vacancies; pay.—The State Board of Elections shall meet in Raleigh whenever the chairman of said Board shall call such meetings as may be necessary to discharge the duties and functions imposed upon said Board by this chapter at such times and places as he may appoint. At the first meeting held after the appointment of members for a new term, the members shall take the oath of office and the Board shall then organize by electing one of its members chairman and another secretary of said board.

The chairman of the State Board of Elections shall call a meeting of the Board upon the application in writing of any two members thereof, or if there be no chairman, or if the chairman does not call such meeting, any three members of said Board shall have power to call a meeting of the Board and any duties imposed or power conferred by this chapter may be performed or exercised at such meeting, although the time for performing or exercising the same prescribed by this chapter may have expired; and if at any meeting any member of said Board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day, for not more than three days, at the end of which time, if there should be no quorum, the Governor may remove the members so failing to attend summarily and appoint their successors.

Any vacancy occurring in the said Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term.

The members of the Board shall receive in full compensation for their services four dollars per day for the time they are actually engaged in the discharge of their duties, together with their actual traveling expenses, and such other expenses as are necessary and incidental to the discharge of the duties imposed by this chapter. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C. S., s. 5922; 1933, c. 165, s. 1.)

§ **163-10. Duties of the State Board of Elections.**—It shall be the duty of the State Board of Elections:

(1) To appoint, in the manner provided by law, all members of the county boards of elections, and to advise such members of such boards as to the proper methods of conducting primaries and elections.

(2) To prepare rules, regulations and instructions for the conduct of primaries and elections.

(3) To publish and furnish to the county boards of elections and other election officials, from time to time, a sufficient number of indexed copies of all election laws then in force.

(4) To publish, issue and distribute such explanatory pamphlets as in the opinion of the Board should be issued to the electorate.

(5) To furnish to the county boards of elections such registration and poll books, cards, blanks, instructions and forms as may be necessary for the registration of voters and holding elections in the respective counties.

(6) To determine, in the manner provided by law, the forms of ballots, the forms of all blanks, instructions, poll books, tally sheets, abstract and return forms, and certificates of elections to be used in primaries and elections.

(7) To prepare, print and distribute to the county boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties, and to instruct the county boards of elections as to the printing of their county and local ballots.

(8) To certify to the several county boards of elections the names of such candidates for district offices who are required to file notice of candidacy with the State Board of Elections, but whose names are required to be printed on the county ballots.

(9) To require such reports from the several county boards and election officers as are provided by law, or as may be deemed necessary.

(10) To compel the observance, by election officers in the counties, of the requirements of the election laws, and the State Board of Elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws pertaining to their duties thereunder. And the State Board of Elections shall have power to remove any member of a county board of elections for neglect or failure in his duties and to appoint a successor.

(11) To investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county, and to report violations of the election laws to the Attorney General or solicitor of the district for further investigation and prosecution.

(12) To tabulate the primary and election returns and to declare the results of same, and to prepare abstracts of the votes cast in each county in the State for such offices as is provided by law shall be tabulated by the State Board of Elections.

(13) To keep a minute book showing a record of all proceedings and findings at each meeting of the State Board of Elections, which book shall be kept in the office of the State Board of Elections.

(14) To make such recommendations to the Governor and legislature relative to the conduct and administration of the primaries and the elections in the State as it may deem advisable.

(15) To have the general supervision over the primaries and elections in the

State and it shall have the authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable: Provided same shall not conflict with any provisions of the law.

(16) The State Board of Elections may, under such rules and regulations as it may prescribe, when it deems it necessary and advisable, authorize the chairman of any county board of elections to delegate the authority to any other member of such county board of elections to receive applications for and to issue absentee ballots in any primary or general election; provided, the chairman of any county board of elections may in his discretion decline to delegate any other member of said board to receive applications for and to issue absentee ballots.

In the performance of these enumerated duties, the chairman of the State Board of Elections shall have the power to administer oaths, issue subpoenas, summon witnesses, compel the production of papers, books, records, and other evidence; and to fix the time and place for hearing any matter relating to the administration and the enforcement of the election laws: Provided, however, the place of hearing shall be had in the county where the irregularities are alleged to have been committed. (1901, c. 89, s. 7; Rev., s. 4302; C. S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982.)

Editor's Note.—The 1945 amendment inserted subdivision (16). The title of the amendatory act purports to amend this section but there is no reference to the section in the body of the act.

Supervisory and Other Powers.—The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the election laws by county boards of elections, and the duty of the State Board to canvass the returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

Board May Make Rules and Regulations Not in Conflict with Law.—The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the Constitution forbids the legislature to delegate the power to make law to any other body. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937); Ponder v. North Carolina State Board of Elections, 233 N. C. 707, 65 S. E. (2d) 377 (1951); Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Article 4.

County Board of Elections.

§ 163-11. County boards of elections; appointments; term of office and qualifications.—There shall be in every county in the State a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the State Board of Elections on the Friday preceding the tenth Saturday preceding each primary election, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party, and the State chairman of each political party shall have the right to recommend three electors in each county for such offices, and it shall be the duty of the State Board of Elections to appoint said county board from the names thus recommended: Provided, that said chairman shall recommend such persons at least fifteen days before the tenth Saturday before the primary election is to be held.

No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office in the primary or election.

No person, while acting as a member of a county board of elections, shall serve as a county campaign manager of any candidate in a primary or election. (1901, c. 89, s. 6; Rev., s. 4303; C. S., s. 5924; 1933, c. 165, s. 2; 1945, c. 758, s. 1; 1949, c. 672, s. 1; 1955, c. 871, s. 1.)

Editor's Note.—The 1933 amendment made ineligible as a member of the county board any office holder or candidate in a primary or general election. See 11 N. C. Law Rev. 228.

The 1945 amendment rewrote the proviso at the end of the first paragraph, and the 1949 amendment added the last paragraph.

The 1955 amendment inserted "on the Friday preceding the tenth Saturday" in lieu of "on the tenth Saturday" formerly appearing in the first sentence of the first paragraph.

§ 163-12. Meetings of county boards of elections; vacancies; pay.—The county board of elections in each county in the State shall meet in their respective counties at the courthouse at noon on the ninth Saturday before each primary election, and a majority being present, they shall take the oath of office and shall then organize by electing one of its members chairman and another member secretary, and it may meet at such other times and places as the chairman of said board, or any two members thereof may direct, for the performance of such duties as required by law.

Whenever a vacancy occurs in the membership of a county board of election, the State chairman of the political party of the vacated member shall have the right to recommend two electors for such office, and it shall be the duty of the State Board of Elections or the chairman of the State Board of Elections to fill the vacancy from the names thus recommended.

The members of the county board of elections shall receive in full compensation for their services fifteen dollars per day for the time they are actually engaged in the discharge of their duties, together with such other expenses as are necessary and incidental to the discharge of their duties: Provided, that the chairman of a county board of elections shall receive for his services, when actually engaged in the discharge of his duties, the sum of fifteen dollars per day. Provided further that the board of county commissioners of a county shall have the right and authority, in lieu of the provisions of this section relating to the compensation of the chairman of the county board of elections, to pay additional compensation to the chairman other than that mentioned above. (1901, c. 89, s. 11; Rev., s. 4304; C. S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1, c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1.)

Local Modification.—Hyde, Iredell and Nash: 1941, c. 305, s. 2.

Editor's Note.—Prior to the 1923 amendment this section required that the board of elections should meet not later than the first Monday in September. The 1941 amendment added the proviso at the end of the section.

The 1945 amendment increased the compensation first mentioned in the last paragraph from three to five dollars per day, and increased the compensation of the chairman from five to seven dollars per day.

The first 1953 amendment rewrote the second paragraph. The second 1953 amendment increased the compensation of board members in the third paragraph from five to ten dollars, and the compensation of the chairman from seven to ten dollars. It also added the second proviso to the third paragraph. The 1957 amendment increased the compensation of board members in the third paragraph from ten to fifteen dollars. The 1959 amendment substituted "ninth Saturday" for "seventh Saturday" in the first paragraph. It also increased the compensation of the chairman from ten dollars to fifteen dollars in the third paragraph.

§ 163-12.1. Compensation of board members and other personnel in counties having loose-leaf and visible registration system and permanent registration.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the members of the county board of elections shall be paid such compensation for the performance of their duties as shall be fixed in the discretion of the county commissioners of such county, and the executive secretaries, if such be named, and all special registration commissioners, other clerks, employees and other board personnel of such county board of elections shall be paid such compensation for the performance of their duties as shall be fixed in the discretion of the county board of elections, by and with the consent and approval of the board of county commissioners of the county. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-13. Removal of member of county board of elections; filling vacancies.—The State Board of Elections shall have the power to remove from office any member of the county board of elections for incompetency, failure of duty, fraud, or for any other satisfactory cause. When any member of the county board shall be removed by the State Board, the vacancy occurring shall be filled by the State Board of Elections. Whenever a vacancy occurs in the membership of a county board of elections for any other cause than removal by the State Board of Elections, the State chairman of the political party of the vacating member shall have the right to recommend two electors for such office and it shall be the duty of the State Board of Elections or the chairman of the State Board of Elections to fill the vacancy from the names thus recommended. (1901, c. 89, s. 11; Rev., s. 4305; 1913, c. 138; C. S., s. 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, s. 2; 1953, c. 410, s. 2.)

Editor's Note.—The 1933 amendment changed this section by adding fraud as a cause for removal of a member of the board. See 11 N. C. Law Rev. 228.

The 1953 amendment rewrote the part of this section comprising the third sentence.

Cited in Hill v. Britt, 231 N. C. 713, 58 S. E. (2d) 727 (1950).

§ 163-14. Duties of county boards of elections.—The boards of elections within their respective jurisdictions by a majority vote shall exercise, in the manner herein provided, all powers granted to such boards in this chapter, and shall perform all the duties imposed by law which shall include the following:

(1) To establish, define, provide, rearrange and combine election precincts.

(2) To fix and provide the places for registration, when required, and for holding primaries and elections.

(3) To provide for the purchase, preservation and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers and equipment as may be used in registration, nominations and elections.

(4) To appoint and remove its clerk, assistant clerks, and employees, and all registrars, judges, clerks and other officers of elections, and to fill vacancies, and to designate the ward or district and precinct in which each shall serve.

(5) To make and issue such rules, regulations and instructions, not inconsistent with law, or the rules established by the State Board of Elections as they may deem necessary for the guidance of election officers and voters.

(6) To advertise and contract for the printing of ballots, and other supplies used in registrations and elections.

(7) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law.

(8) To provide for the delivery of ballots, poll books and other required papers and materials to the polling places.

(9) To cause the polling places to be suitably provided with stalls and other supplies required by law.

(10) To investigate irregularities, nonperformance of duties, or violations of laws by election officers and other persons; to administer oaths, issue

subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney.

(11) To review, examine and certify the sufficiency and validity of petitions and nomination papers.

(12) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof and transmit such abstracts to the proper authorities provided by law.

(13) To issue certificates of election to county officers and members of the General Assembly, except State Senators in districts composed of more than one county.

(14) To keep minute book of proceedings of board.

(15) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

(16) To perform such other duties as may be prescribed by law or the rules of the State Board of Elections. (1901, c. 89, s. 11; Rev., s. 4306; C. S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2.)

Editor's Note.—The 1933 amendment changed this section so as to consolidate and enumerate the duties and powers of the board under sixteen clauses. Several of these were new or partly new with the amendment. See 11 N. C. Law Rev. 228.

Board Must Act as Body.—When the State Board of Elections instructs certain county boards of elections to amend their respective returns in accordance with the State Board's rulings on protests challenging the validity of certain ballots, it is necessary for the county boards to hear the challenges and make the amended returns, acting as a body in a duly assembled legal session, and action taken and amended returns made by two members of the county board of each county, respectively, without notice to the third member, are void as a matter of law. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937).

§ 163-14.1. Executive secretaries to county boards in counties having loose-leaf and visible registration system and permanent registration.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections shall have the power and authority by a majority vote to designate and appoint from time to time executive secretaries, and to delegate to such executive secretaries, by specific resolution, so much of the administrative details of election functions, duties and work of the county board of elections, the officers and members thereof, or the supervisory heads of county units, where such units have been established as provided by G. S. 163-14.2, as is now, or may hereafter be, vested in county boards of elections, its officers and members, by chapter 163 of the General Statutes of North Carolina, as said county board of elections may see fit by such majority vote to give to such executive secretaries, and thereafter such executive secretaries shall act within the limitation of the authority and duties delegated and imposed upon them by the county board of elections, as fully and to the same extent as though the same were actually done and performed by the county board of elections, its officers and members: Provided, that no delegation of the quasi-judicial or policy making duties and authority of the county board of elections shall be made. No person shall serve as an executive secretary who holds any elective public office or who is a candidate for any office in a primary or election, or who holds an official position with any political party. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-14.2. Creation of administrative and jurisdictional units and designation of supervisory heads thereof in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections may, by a resolution passed by a majority vote, divide said county into two or more administrative and jurisdictional units and specify by name the member of the county board of elections who shall serve in the capacity of supervising head of said specified unit of the county. Upon a certification of this resolution by the county board of elections to the State Board of Elections, the member of the county board of elections, specified as the administrative and supervisory head of such unit, shall thereafter possess all of the authority and powers and be charged with all of the duties with respect to the unit of the county so specified in said resolution as are now, or may hereafter be, specified for chairmen of county boards of elections. Such division of a county into units for administrative supervision and authority shall be subject to immediate revocation at any time by the county board of elections upon a resolution passed by a majority vote and filed with the State Board of Elections. Whenever a county board of elections has divided a county into administrative and supervisory units under the provisions of this section, it is authorized to divide the registration and other records as they pertain to the administrative and supervisory units created, and to maintain separate offices in each of the administrative and supervisory units created. The creation of such administrative units and designation of supervisory heads shall be in addition to the general powers and authority of the officers of the county board of elections and shall not be a limitation thereof. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-14.3. Power of boards of elections in such counties to authorize and publish unofficial reports of elections.—In counties in which a loose-leaf and visible registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections is authorized to require each registrar, immediately following the counting of ballots in any primary or general election, to report the same personally, by telephone or otherwise to the county board of elections, the report to be unofficial and to have no binding effect upon the official county canvass to follow thereafter. The county board of elections is authorized to publish the reports so received from the registrars to the press and to radio and television stations in such manner and upon such terms and conditions as it may think proper. The method and manner of receiving such precinct reports from the registrars and the publication of the same, as aforesaid, shall be by and with the consent and approval of the board of county commissioners. The expense thereof shall be fixed in the discretion of the county board of elections by and with the consent and approval of the county commissioners. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

ARTICLE 5.

Precinct Election Officers and Election Precincts.

§ 163-15. Appointment of registrars and judges of elections; qualifications; special registration commissioners in certain counties.—The county boards of elections, at the first meeting herein provided to be held on the seventh Saturday before each primary election, shall select one person of good repute who shall act as registrar and two other persons of good repute who shall act as judges of election for each election precinct in the respective counties for both the ensuing primary and general election, whose terms of office shall continue for two years from the time of their appointment, or until their successors are appointed and qualified, and who shall conduct the primaries and elections within their respective precincts. Each registrar and judge of election so appointed shall be able to read and write and they shall be residents of the precincts for which they are appointed. The chairman of each political party in each county shall have the right to recommend from three to five electors in each precinct, who are residents of the precinct, and who shall be of good moral character and able to read and write, for appointment as registrar and for judges of election in each precinct, and such appointments may be made from such names so recommended: Provided, such recommendations are made by the seventh Saturday before each primary election: Provided, further, that in any primary, when only one political party participates in such primary then all of the precinct officials selected for holding such primary shall be chosen only from such political party so participating. In a primary, where more than one political party participates, and in the general election, not more than one judge of election in each precinct shall be of the same political party with that of the registrar. No person holding any office or place of trust or profit under the government of the United States, or the State of North Carolina, or any political subdivision thereof, shall be eligible to appointment as an election official: Provided that nothing herein contained shall extend to officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections may at such time select such additional persons of good repute as may be deemed necessary who shall act as special registration commissioners, who shall serve for two years at the will of the board of elections, and whose authority may be terminated at any time without cause. Such special registration commissioners shall take the oath required of regular registrars and shall thereafter be qualified and have the authority to receive applications and administer oaths for registration but shall have no powers or duties relative to the holding of any primary or general election. All registrations executed and sworn to before special registration commissioners shall be official registrations only when received and approved by the county board of elections, which, acting through its officers, shall have the power to register electors to the extent only of reviewing, processing, rejecting or completing applications received by it from the special registration commissioners. Such special registration commissioners shall be selected upon nomination in the same manner as that provided for nomination of regular registrars. All registrars shall have the authority to register any qualified citizen within such county, and all special registration commissioners shall have the authority to receive applications and to administer oaths for registration, at any time or place within such county, regardless of the precinct residence of the registrar, the special registration commissioner, or of the citizen applying for registration: Provided, however, that the county board of elections in any county covered by this paragraph shall have power to limit the authority of registrars to their own precincts, wards, or election districts and to limit the areas over which any special registration commissioners may exercise authority to receive applications and administer oaths for registration.

The registrars, judges and assistants shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths. (1901, c. 89, s. 8; Rev., s. 4307; C. S., s. 5928; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1.)

Local Modification.—Durham: 1937, c. 299.

Editor's Note.—The 1933 amendment rewrote this section. See 11 N. C. Law

Rev. 228. And the 1947 amendment rewrote the next to last sentence of the first paragraph.

The first 1953 amendment inserted the second paragraph. And the second 1953 amendment struck out a former sentence of the first paragraph which read: "The county boards of elections shall also have the right to appoint assistants for such precincts where there are more than three hundred registered voters when deemed advisable."

The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing at the beginning of the second paragraph.

The 1957 amendment added the proviso at the end of the second paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

Except for McPherson v. Burlington, the following cases were decided under § 5969 of the Consolidated Statutes, repealed by Public Laws of 1933, ch. 165, s. 7. However, these cases seem applicable to the present law as the provisions of former § 5969 are substantially set forth in the instant section.

Party of Person Appointed by Board of Elections.—Upon failure of a chairman of the State executive committee of a political party to designate judges of election on behalf of such party, the persons appointed must belong to the political party for which they are appointed. Harkins v. Cathey, 119 N. C. 649, 26 S. E. 136 (1896).

The board of elections has no authority to appoint two registrars from the same party in the same voting precinct. Mullen v. Morrow, 123 N. C. 773, 31 S. E. 1003 (1898).

Mandamus to Compel Board to Appoint Proper Persons.—Where the chairman of the State executive committee of one political party fails to designate the judges of election for a particular county for and on behalf of such party, and the clerk of the superior court (now county board of elections) under the exercise of the power of appointment given in this section, appoints persons not having the requisite qualifications, the chairman of the executive committee of another political party in such county may bring mandamus to compel the appointment of proper persons. Harkins v. Cathey, 119 N. C. 649, 26 S. E. 136 (1896).

Appointment of Registrars in Violation of Residence Requirements.—Where neither the regular registrar of a precinct nor the person appointed registrar for one day under § 163-17 resided in the area in which the special annexation election was held, nevertheless, they were at least de facto registrars during the time they served as such, and in the absence of any evidence that the result of the election was affected thereby, their appointments would be deemed irregularities but insufficient to void the election. McPherson v. Burlington, 249 N. C. 569, 107 S. E. (2d) 147 (1959).

§ 163-16. Names of precinct officers published by board.—The county board of elections shall, immediately after the appointment of the registrars and judges of elections as herein provided, publish the names of the persons so appointed, at the courthouse door of said county, and shall notify each person appointed of his or her appointment, either by letter or by having a notice to be served upon said persons by the sheriff. (1901, c. 89, s. 16; Rev., s. 4308; C. S., s. 5929; 1923, c. 111, s. 2; 1933, c. 165, s. 3.)

§ 163-17. Vacancies in precinct offices; how filled.—If any registrar or judge of election shall fail to perform the duties of his office, and for that, or for any other cause be removed from office, or shall die or resign, or if there shall for any other cause be a vacancy in said office, the chairman of the county board of elections may appoint another in his place, of the same political party, and have such person or persons notified of the appointment. If any person appointed judge of election shall fail to attend at the polls at the hour of opening the same, the registrar of the township, ward or precinct shall appoint some suitable elector of the same political party as the judge failing to attend, if practicable, to act in his stead, who shall be by him sworn before acting. If the registrar shall fail to appear at the polls, then the judges of election may appoint another to act as registrar, who shall also be sworn before acting. (1901, c. 89, s. 9; Rev., s. 4309; C. S., s. 5930; 1933, c. 165, s. 3.)

Cross Reference.—See note to § 163-15.

§ 163-18. Removal of precinct officers; reasons for.—The county board of elections shall have power to remove any registrar or judge of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud or for any other satisfactory cause. (1901, c. 89, s. 10; Rev., s. 4310; C. S., s. 5931; 1933, c. 165, s. 3.)

§ 163-19. Compensation for certain duties relating to elections.—The registrar shall receive three cents for each name registered in the new registration when ordered, and thereafter in the revision of the registration book he shall receive one cent for each name copied from the original registration book: Provided, that in addition to the compensation hereinbefore allowed the registrar, it shall be lawful for the county commissioners to pay to the registrar such additional compensation as may be by them considered just and fair. The registrar or judge of election who shall act as returning officer shall be allowed three dollars, to be payable out of the county treasury.

Each sheriff shall receive thirty cents for each notice he is required to serve under the law provided for holding elections. The compensation allowed officers shall be paid by the county treasurer after being audited by the board of county commissioners.

Clerks and registers of deeds shall also be allowed the usual registration fees for recording the election returns, to be paid by the county. (1901, c. 89, ss. 11, 62; 1905, c. 434; Rev., ss. 2784, 4304; 1907, c. 760; 1919, c. 61; C. S., s. 3917.)

Editor's Note.—Session Laws 1947, c. 496 made the compensation provided by this section applicable in Ashe County.

§ 163-20. Compensation of precinct officers.—Judges of elections and assistants shall each receive for their services on the day of a primary or election the sum of ten dollars ($10.00). The registrar shall receive the sum of fifteen dollars ($15.00) per day for his services on the day of a primary or election, and shall also receive the sum of fifteen dollars ($15.00) per day for each Saturday during the period of registration that he attends at the polling place for the purpose of registering voters. Any person sworn in to act as registrar or judge of election shall receive the same compensation as the registrar and judge: Provided, that markers appointed for assisting voters in marking their ballots shall not receive any compensation therefor: Provided, further, that the registrars and judges of elections shall receive the same compensation for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election: Provided, further, that the board of commissioners of any county may provide for additional compensation for such precinct election officials. (1901, c. 89, s. 42; Rev., s. 4311; C. S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; 1957, c. 182, s. 2.)

Local Modification.—Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Lincoln: 1963, c. 874; Mecklenburg: 1937, c. 382; Watauga: 1939, c. 264.

Editor's Note.—The 1935, 1939, 1945 and 1951 amendments increased the compensation. The 1941 amendment added the second proviso, and the 1945 amendment added the last proviso.

The 1947 amendment struck out "and said registrar shall receive no other compensation whatsoever" formerly appearing at the end of the second sentence. It also struck out from the end of the last proviso "in precincts where the duties of those election officials require services for a substantial period of time after the closing of the polls."

The 1957 amendments substituted "ten dollars" for "seven dollars" in the first sentence, and "fifteen dollars" for "ten dollars" in the second sentence.

§ 163-20.1. Compensation of precinct officers and personnel in certain counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the registrars shall receive for their registration services such compensation as shall be fixed in the discretion of the county board of elections, by and with the consent and approval of the board of county commissioners of the county, and the registrars, judges of election, assistants, clerks, ballot counters, and other precinct election personnel shall be paid such compensation for the performance of their duties as shall be fixed in the discretion of the county board of elections, by and with the consent and approval of the board of county commissioners of the county. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ **163-21. Duties of registrars and judges of election.**—The registrars and judges of election shall perform such duties as are provided by law, which duties shall consist of:

(1) The fair and impartial conduct of the primaries and elections within their respective precincts on the day of election.

(2) The enforcement of peace and good order in and about the place of registration and voting. They shall especially keep the place of access of the electors to the polling place open and unobstructed, prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting. They shall protect challengers and witnesses against molestation and violence in the performance of their duties, and may eject from the polling place any such challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult or disorder. In the discharge of these duties they may call upon the sheriff, police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election law, but such arrest shall not prevent such person from registering or voting if he is entitled so to do. The sheriff, all constables, police officers and other officers of the peace, shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The registrar and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at a voting precinct.

(3) The registrar shall have in his charge the actual registration of voters within his precinct and shall attend the polling place on the days required for the registration of new voters and for hearing challenges, but in the performance of these duties the registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe not inconsistent with the law.

(4) The registrar shall have charge of the registration book on the day of election or primary for passing on the registration of voters who present themselves at the polls for the purpose of voting.

(5) One of the judges of election shall keep a poll book in which shall be entered the name of every person who shall vote in the primary or election. The poll and registration books shall be signed by the registrar and judges of election at the close of any primary or election and filed with the chairman of the county board of elections.

(6) The registrars and judges shall hear challenges on the right of electors to vote as provided by law.

(7) The registrars and judges shall count the votes cast in their precinct and make such return of same as is provided by law.

(8) The precinct officers shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as required by law. (1901, c. 89, s. 41; Rev., s. 4312; C. S., s. 5933; 1933, c. 165, s. 3; 1939, c. 263, s. 3½; 1947, c. 505, s. 3.)

Editor's Note.—The 1947 amendment added the last sentence of subdivision (2).

Absence of Judges.—It was held under a former statute that in the absence of fraud it is not material to the validity of an election that the persons appointed judges to hold it electioneered, or were absent from their posts at different times during the day. Wilson v. Peterson, 69 N. C. 113 (1873).

Applied in Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

Cited in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937).

§ **163-22. Election precincts established or altered.**—The county boards of elections may, in their respective counties, adopt the present election precincts, or they may establish new precincts, but the election precincts and polling places as now fixed in each county shall remain as they now are until altered. In the case of the alteration of the election precincts or polling places therein, they shall give twenty days' notice thereof, prior to the beginning of the registration period, in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. And the county board of elections shall have power from time to time, after dividing their counties into election precincts, to establish, alter, discontinue, or create such new election precincts in their respective counties as they may deem expedient, giving twenty days' notice thereof, prior to the beginning of registration period, by advertising in some public journal, or in lieu thereof, in three public places in such county, and at the courthouse door. If any polling place is changed in any precinct, like advertisement of such change shall be given. And there shall be at least one polling place in every township, conveniently located for a majority of the voters. (Rev., s. 4313; 1913, c. 53; C. S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3.)

§ **163-23. New registration of voters or revision of registration books; how made.**—The county board of elections shall have power from time to time to order a revision of the registration book of any precinct in any township and to order a new registration for any precinct; and if and when a new registration is ordered, notice shall be given as hereinbefore provided for the alteration of an election precinct or polling place: Provided, however, when a new registration or revision is ordered as herein provided for, the names of all persons who have been registered under the absentee voters' law shall remain upon the registration books unless the said persons so registered have died or otherwise become disqualified electors. The several county boards of elections shall have power to revise the registration books of any precinct and may require them to be purged of illegal or disqualified voters, after notice to such voters as herein directed. When an order for revision is made by said county board of elections, it shall be directed to the registrar and judges of election of the precinct to which it relates, directing said officials to meet at the polling place on the first Saturday for the registration of voters, before any primary or general election, and to prepare from the registration books a list of the names of registered voters, with their names and addresses as appearing on the registration books, who are, in the opinion of said precinct officials, dead or disqualified by removal from said precinct or county for the length of time prescribed by law to be disqualified to vote in that particular precinct. When such list is prepared it shall, within forty-eight hours, be delivered to the chairman of the county board of elections, who shall cause to be mailed to each of the names on said list, at his or her address as shown on said list, a notice requiring such person to appear at the polling place for the precinct in which they are registered, on the Saturday prescribed for hearing challenges, and show that they are legally entitled to vote in that particular precinct, or in lieu of a personal appearance at the precinct on the day named for hearing challenges, such person may furnish such satisfactory evidence by mail or otherwise, that he or she is qualified to vote in said precinct. Upon failure of such person to make such personal appearance on challenge day, or upon failure of such person to offer satisfactory evidence that he or she is qualified and entitled to vote in said precinct in the approaching primary or general election, their names shall be stricken off the registration book. After due investigation, such precinct officers shall strike from the registration book the names of all such persons found by them to be dead or disqualified to vote by removal from the precinct for such time as prescribed by law shall disqualify them from voting in such precinct.

However, in the event that any person, whose name has been removed from the registration book by said county board of elections as having been disqualified to vote in that precinct should appear at the polling place on election day and give satisfactory evidence to the registrar and judges that he had never received any notice by mail or otherwise of his name being placed among the list of disqualified voters in that precinct, and can satisfy said officials that he is qualified to vote in that precinct, then such person's name shall be placed back on the registration book and he shall be allowed to vote in said precinct as before. (1905, c. 510; Rev., s. 4314; 1909, c. 894; C. S., s. 5935; 1921, c. 181, s. 3; 1933, c. 165, s. 3.)

Local Modification.—Graham: 1957, c. 119.

Cross Reference.—As to State-wide registration of voters, see § 163-43 et seq.

Editor's Note.—The provision for new registrations of voters and revisions of the registration books was rewritten by the 1933 amendment. See 11 N. C. Law Rev. 228.

ARTICLE 6.

Qualification of Voters.

§ **163-24. Persons excluded from electoral franchise.**—The following classes of persons shall not be allowed to register or vote in this State, to wit: First, persons under twenty-one years of age; second, idiots and lunatics; third, persons who have been convicted or confessed their guilt in open court, upon indictment, of any crime the punishment of which is now or may hereafter be imprisonment in the State's prison, unless such person shall have been restored to citizenship in the manner prescribed by law. (1901, c. 89, s. 14; Rev., s. 4315; C. S., s. 5936.)

Cross Reference.—As to restoration of citizenship, see chapter 13.

Cited in Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ **163-25. Qualifications of electors; residence defined.**—Subject to the exceptions contained in the preceding section, every person born in the United States and every person who has been naturalized, and who shall have resided in the State of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, thirty days next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward or township in which he resides: Provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal.

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person shall not be considered to have lost his residence who leaves his home and goes into another State or county of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

(4) The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence; except that where the husband and wife have separated and live apart, the place where he or she resides the length of time required by the provisions of this

article to entitle a person to vote, shall be considered and held to be his or her residence.

(5) If a person remove to another State or county within this State, with the intention of making such State or county his permanent residence, he shall be considered to have lost his residence in the State or county from which he has removed.

(6) If a person remove to another State or county within this State, with the intention of remaining there an indefinite time and making such State or county his place of residence, he shall be considered to have lost his place of residence in this State or county from which he has removed, notwithstanding, he may entertain an intention to return at some future time.

(7) School teachers who remove to a county for the purpose only of teaching in the schools of that county temporarily and with the intention or expectation of returning to the county of their parents or other relatives during the vacation period to live, and who do not have the intention of becoming residents of the county in which they have moved to teach, shall be considered residents of that county of their parents or other relatives for the purpose of voting.

(8) If a person remove to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence. This rule shall also apply to employees of the State government who remove from one county to another within the State, unless a contrary intention is shown by such employee.

(9) If a person goes into another State or county, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.

(10) All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the registrar and judges of election in the precinct where the question arose. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, s. 15; Rev., s. 4316; C. S., s. 5937; 1920, Ex. Sess., c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2.)

Editor's Note.—No changes were made in this section by the 1933 amendment as to the qualifications for suffrage, age, citizenship, literacy, and residence requirements, but ten rules are added to govern and aid registrars and judges of elections in determining the difficult problem of the voter's legal residence. See 11 N. C. Law Rev. 229.

The 1945 amendment inserted near the beginning of the first paragraph the words "every person born in the United States and."

The 1955 amendment substituted "thirty days" in lieu of "four months" in the first paragraph and rewrote the proviso to such paragraph.

Change of Voting Qualifications by General Assembly.—The General Assembly cannot in any way change the constitutional qualifications of voters in State, county, township, city or town elections. People v. Canaday, 73 N. C. 198 (1875).

Qualification for Municipal Suffrage.—Qualifications for voting in a municipal election are the same as in a general election. People v. Canaday, 73 N. C. 198, 21 Am. Rep. 465 (1875); State v. Viele, 164 N. C. 122, 80 S. E. 408 (1913); Gower v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

"Residence" Is Synonymous with Domicile.—Residence as a prerequisite to the right to vote in this State, within the purview of N. C. Constitution, Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948). See State v. Grizzard, 89 N. C. 115 (1883).

Meaning of "Residence" Is Judicial Question.—The meaning of the term "residence" for voting purposes, as used in Art. VI, § 2 of the Constitution of North Carolina, is a judicial question. It cannot be made a matter of legislative construction. This is true because the legislature cannot prescribe any qualifications for voters different from those found in the organic law. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Length of Residence and Domicile—Evidence Thereof.—See People v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

Evidence Insufficient to Show Loss of Domicile.—Uncontroverted testimony which discloses that electors whose votes were challenged on the ground of nonresidence left their homes and moved to another state or to another county in this State for temporary purposes, but that at no time did they intend making the other state or the other county in this State a permanent home, is insufficient to support a finding that they had lost their domicile in the county for the purpose of voting. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

The indefiniteness of an elector's intention to return to the county of his domicile is insufficient to establish loss of voting residence—no other having been acquired or intended. State v. Chaplin, 229 N. C. 797, 48 S. E. (2d) 37 (1948).

The right of teachers in a locality to vote therein is made to depend upon whether they were residents therein only for the scholastic year. A question is incompetent that asks them of their intention to make the locality their legal residence, since the answer involves a question of law as to what constitutes a sufficient legal residence to qualify them to vote. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

Infants and Aliens.—X was under 21 years of age and Y was a citizen of Syria, not of North Carolina, at the time they voted. They were therefore disqualified to vote in an election for mayor. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

Three Months Residence Prior to Election.—H testified that he had lived in C only three months before the election and that the defendant registered his name. For this reason he was not a qualified elector to vote in an election for mayor. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

Conviction of Infamous Crime.—See In re Reid, 119 N. C. 641, 26 S. E. 337 (1896).

Person Imprisoned for Misdemeanor.—See People v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

Cited in Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ **163-26. Residence of women.**—For the purpose of the registration and voting of women, the residence of a married woman living with her husband shall be where her husband resides, and of a woman living separate and apart from her husband or where for any reason her husband has no legal residence in this State, then the residence of such woman shall be where she actually resides. (Ex. Sess. 1920, c. 18, s. 3; C. S., s. 5937(a).)

§ **163-27. Registration a prerequisite.**—Only such persons as are registered shall be entitled to vote in any election held under this chapter. (1901, c. 89, s. 12; Rev., s. 4317; C. S., s. 5938.)

Registration Is Necessary and Evidence of Right to Vote.—When duly made registration is prima facie evidence of the right to vote. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889); State v. Waldrop, 104 N. C. 453, 10 S. E. 694 (1889). This section must be complied with in order to constitute one a qualified voter. Smith v. Wilmington, 98 N. C. 343, 4 S. E. 489 (1887); Pace v. Raleigh, 140 N. C. 65, 52 S. E. 277 (1905).

Cited in Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ **163-28. Voter must be able to read and write; registrar to administer section.**—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section. (1901, c. 89, s. 12; Rev., s. 4318; C. S., s. 5939; 1927, c. 260, s. 3; 1957, c. 287, s. 1.)

Editor's Note.—This section prior to the 1927 amendment contained a proviso that the voter should show to the registrar that he or his ancestor was entitled to vote prior to January 1, 1867, in any state in the United States as provided by Art. 6, § 4 of the Constitution, and that if such voter was otherwise qualified he should be registered regardless of whether or not he could read or write.

The 1957 amendment rewrote this section.

The provisions of this section are valid, since such qualification is prescribed by the Constitution, Art. VI, § 4, and authority therein granted the legislature by Art. VI, § 3, to enact general legislation to carry out the provisions of the article. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

See also, Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

The provision of this section requiring all persons applying for registration to be able to read and write any section of the Constitution as an educational qualification to the right to vote is authorized and, since it applies alike to all persons who present themselves for registration to vote, it makes no discrimination based on race, creed or color, and therefore does not conflict with the 14th, 15th or 17th Amendments to the Constitution of the United States. Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

And the provision placing the duty upon the registrar is logical and reasonable, and does not constitute class legislation, since its provisions apply to all classes, and there being an adequate remedy at law if a registrar, in bad faith or in abuse of power or discretion, should refuse to register a person duly qualified. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

Meaning of "Read and Write."—The General Assembly intended the words "read and write" as used in this section to have those meanings commonly attributed to them in ordinary usage. In construing that section, we give to the words their ordinary, natural and general meaning. Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Section Provides Fair Method of Determining Literacy.—The present requirement, applicable to members of all races, that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language" seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. It cannot be condemned on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot. Lassiter v. Northampton Board of Elections, 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

It does not contemplate the utmost proficiency in reading and writing sections of the Constitution. Perfection is not the measure of qualification. The standard is reasonable proficiency in reading and writing any section of the Constitution in the English language. The occasional misspelling and mispronouncing of more difficult words should not necessarily disqualify. Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Writing from Dictation of Another Is Unreasonable.—Under the provisions of this section a test of literacy that requires an applicant for registration to write a section or sections of the Constitution from the reading and dictation of another, however fairly and clearly the same might be read and dictated, is unreasonable and beyond the clear intent of the statute. Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Challenging Section in Federal Court.—The question of whether this section should be declared void and its enforcement enjoined by a federal court on the ground that it was violative of rights under the federal Constitution would not be considered until plaintiff's administrative remedies had been exhausted and the North Carolina Supreme Court had interpreted the provisions of the section in the light of the North Carolina Constitution. Lassiter v. Taylor, 152 F. Supp. 295 (1957).

§ 163-28.1. Appeal from denial of registration.—Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 P. M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age and address of the appealing party, and shall state the reasons for appeal. (1957, c. 287, s. 2.)

Cited in Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ 163-28.2. Hearing on appeal before county board of elections.—Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elections, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the county board of elections shall be a quorum for the purpose of hearing appeals on the question of registration, and the decision of a majority of the members of the board shall be the decision of the board. All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matters pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board. (1957, c. 287, s. 3.)

Cited in Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

§ **163-28.3. Appeal from county board of elections to superior court.**—Any person aggrieved by a final order of a county board of elections may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of that precinct. The court shall not be authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the superior court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions. (1957, c. 287, s. 4.)

Cited in Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958), affirmed in 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959); Bazemore v. Bertie County Board of Elections, 254 N. C. 398, 119 S. E. (2d) 637 (1961).

Article 7.

Registration of Voters.

§ **163-29. Qualification as to residence for voters; oath to be taken.**—In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name, age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. If the applicant for registration has removed from another precinct, ward or election district in the same city, town or township since his or her last registration, such applicant shall, before being allowed to register, fill out and sign a printed transfer certificate, furnished to the registrars by the chairman of the county board of elections prior to the opening of the registration period, notifying the registrar of the precinct from which the applicant has removed of the removal of said applicant from the former precinct and authorizing the said registrar to remove his or her name from the old precinct registration book. The transfer certificate shall be in substantially the following form:

To the Registrar of .... precinct, ... County.

I hereby certify that I have removed my residence from .... voting precinct, where I was a registered elector, to .... voting precinct within the same city, town or township, and I have this day applied for registration before the undersigned Registrar of this precinct where I now reside, and I hereby authorize you to remove my name from your registration book as I am no longer qualified to vote in your precinct.

Signed this .... day of ...., 19...

....
Signature of Applicant

Witness:

.... Registrar
.... Precinct
.... Address

It shall be the duty of the registrar to sign said certificate as a witness to the applicant's signature and immediately after the close of the registration period the registrar shall mail all of such certificates so filled out to the chairman of the county board of elections. Upon the receipt of such certificates from the registrars, it shall be the duty of the chairman of the county board of elections to mail immediately such certificates to the respective registrars of the precincts from which the applicants have removed, and upon receipt of same the registrars shall cancel the registration of such applicants on the books.

The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from whence he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been a resident of the State of North Carolina for one year and of .... township (precinct or ward) for thirty days; or that I was a resident of .... township (ward or precinct) on the ...... day of .... (being thirty days preceding the election) and removed therefrom to .... township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, no registered voter shall be required to re-register upon moving from one precinct, ward or election district to another precinct, ward or election district in the same county, and in lieu thereof such removing elector shall file with the county board of elections, or with any registrar, or with any special registration commissioner, an affidavit setting forth the former residence, the new residence, the date of removal to the new residence, and further setting forth that all other qualifications to register and vote still exist as of the time of the former registration, upon such form as shall be prescribed by the county board of elections, and thereupon the county board of elections, if the facts of such affidavit are found to be true, shall immediately transfer the registration of such citizen to the precinct, ward, or election district of the new residence of such person, and thereafter such person shall be considered registered and qualified to vote in the precinct, ward, or election district of the new residence; provided, however, that such affidavit requesting transfer shall be made not less than 21 days prior to a primary or general election; provided, further, that the county boards of elections shall have authority to require the elector removing from one precinct, ward, or election district to another precinct, ward, or election district in the same county to file the above-mentioned affidavit with the registrar of the precinct, ward, or election district to which the elector has moved, with the registration commissioner authorized by the said board to receive such affidavit or with the county board of elections. (1901, c. 89, s. 12; Rev., s. 4319; C. S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1.)

Editor's Note.—This section was amended in 1933 so as to require an applicant for registration removing from one precinct to another to present a certificate from the registrar of his former precinct showing that his name has been removed from the registration books of the former precinct before he is entitled to have his name placed on the registration books of another precinct. See 11 N. C. Law Rev. 229.

The 1951 amendment rewrote the part of this section pertaining to transfers.

The 1953 amendment added the last paragraph. The first 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the last paragraph, and the second 1955 amendment inserted "thirty days" in lieu of "four months" formerly appearing two places in the registration oath.

The 1957 amendment added the proviso at the end of the last paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

In General.—While the General Assembly cannot add to the qualifications prescribed by the Constitution for voters, it has the power, and it is its duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Requirements Mandatory.—The requirements of the registration act are mandatory. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Effect of Irregularities.—Where the disregard of constitutional or statutory directions does not affect the result it does not warrant a rejection of the vote. If none are incompetent to vote, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Administration of Oath.—Article 6, § 2, of the State Constitution is satisfied by an oath to support the Constitution of the United States and that of the State. All valid laws, whether State or national, are included by implication. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

In the absence of direct evidence to the contrary it will be presumed that the oath was taken with uplifted hand. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Failure to administer oath would not invalidate an election to determine whether a school tax should be levied in absence of fraud or improper motive. Gibson v. Board, 163 N. C. 510, 79 S. E. 976 (1913).

Registration by Other than Registrar.—The fact that a qualified voter was registered by a third person, with whom the registrar had left the books, does not disqualify him to vote, where such registration has been accepted as sufficient by the registrar. Quinn v. Lattimore, 120 N. C. 326, 26 S. E. 638 (1897).

Inquiry as to Qualifications of Voters.—Registrars of election may ask an elector if he had resided in the State twelve months next preceding the election, and four months in the district in which he offers to vote. They may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and as to the name by which he is commonly known.

If, in reply to such questions, the elector answers that he is twenty-one years old, and has resided in the State twelve months and in the county ninety days (now four months) preceding the election, it is the duty of the registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence. In re Reid, 119 N. C. 641, 26 S. E. 337 (1896).

Sufficiency of Response.—In answer to the question of residence the designation of the county of residence is sufficient; but the designation of the state merely is insufficient. Harris v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Denial of registration and voting to persons qualified to vote, even though by accident or mistake, vitiates the election particularly where it would affect the result. McDowell v. Massachusetts, etc., Constr. Co., 96 N. C. 514, 2 S. E. 351 (1887). See also, Perry v. Whitaker, 17 N. C. 475 (1833); People v. Canaday, 73 N. C. 198 (1875).

§ **163-30. When person can register on election day.**—No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date. (1901, c. 89, s. 21; Rev., s. 4322; C. S., s. 5946.)

Residence for One Year at Time of Election.—Where a person otherwise legally qualified, who had not been allowed to register because at that time he had not been a resident of the State for one year, but who became qualified in that respect on or before the day of election, asked to be allowed to register on election day and tendered his ballot, which was refused, it was held that such vote should have been received. State v. Lattimore, 120 N. C. 426, 26 S. E. 638 (1897).

§ 163-31. Time when registration books shall be opened and closed; oath and duty of registrar; registration in certain counties; new registration when books destroyed or mutilated.—The registration books shall be opened for the registration of voters at nine o'clock a.m., on the fourth Saturday before each election; provided, that where a new county-wide registration is ordered to be held in a county, the registration books in such county shall be opened for the registration of voters at nine o'clock a. m. on the fifth Saturday before such election. The said books shall be closed at sunset on the second Saturday before each election. Every registrar, before entering upon the discharge of the duties of his office, shall take an oath before a justice of the peace or some other person authorized to administer oaths, that will support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith, and that he will honestly and impartially discharge his duties as registrar, and honestly and fairly conduct such election. The registrar of each township, ward or precinct shall be furnished with a registration book prepared as hereinbefore provided, and it shall be his duty, between the hours of nine o'clock a. m. and sunset on each day during the period when registration books are open, to keep open said books for the registration of any voters residing within such township, ward or precinct, and entitled to registration. On each Saturday during the period of registration the registrar shall attend with his registration books at the polling place of his precinct or ward, between the hours of nine o'clock a. m. and sunset, for the registration of voters.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, the registration books, process, or records shall, when ordered by the county board of elections and approved by a majority of the board of county commissioners, be open continuously for the registration of voters or the acceptance of registration applications at all reasonable hours and times at the home of the registrar or the special registration commissioner or wherever the registrar or special registration commissioner may be within the county, and such registrars may register all qualified citizens of the county, and the special registration commissioners may take the registration application and administer the oath without regard to the precinct residence of the registrar, the special commissioner, or of the citizen applying for registration: Provided, however, that the county board of elections in any county covered by this paragraph shall have power to limit the authority of registrars to register persons to their own precincts, wards, or election districts and to limit the areas over which any special registration commissioners may exercise authority to receive applications and administer oaths for registration. The county board of elections in such counties is authorized and empowered to make reasonable rules and regulations to insure such full time registration, including provisions for an immediate delivery of all registrations by the registrars, and the delivery of all applications and oaths by the special registration commissioners to the county board of elections. No person shall be registered to vote without first making a written, sworn and signed application therefor, setting forth the qualifications for registration upon such form as may be approved and adopted by the county board of elections. Registrars in such counties shall attend the polling places only on such days and at such hours as may be fixed in the discretion of the county board of election; provided that no such attendance by the registrars at the polling places shall fall on a day less than 21 days prior to a primary election or a general or special election; and provided, further, that the county board of elections may, in its discretion, require no attendance at the polling places for registering voters, if approved by the county commissioners.

In the event that the registration books for any township, ward or precinct shall, prior to thirty days preceding any primary, general, or special election, be destroyed from fire or other cause or shall become mutilated to the extent that such books can no longer be used, new registration books shall be provided for the registration of voters in such township, ward or precinct and such new registration books shall be opened for the registration of voters at the times and places and in the manner prescribed by this section. Such new registration books may thereafter be used in such township, ward or precinct for all general, primary or special elections, including municipal elections. Notice of such new registration shall be given by advertisement in a newspaper published in the municipality or county in which such township, ward or precinct is located at least ten days before the opening of the new registration books and such notice shall also state the location of the polling place and the name of the registrar for such township, ward or precinct. When a special registration is held under this law the Saturday for challenge day may be combined with the last Saturday for registration, so that voters may be registered on challenge day when time does not permit an extra Saturday for challenge day prior to any primary or election. (1901, c. 89, s. 18; Rev., s. 4323; C. S., s. 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 3; 1961, c. 382; 1963, c. 303, s. 2.)

Editor's Note.—The 1923 amendment transposed the location of sentences and phrases of this section and introduced a few changes of phraseology, none of which changes affected the substance of the section.

The 1933 amendment changed the time for opening the registration books from the fifth Saturday to the fourth Saturday before each election. See 11 N. C. Law Rev. 229.

The 1947 amendment added the present third paragraph.

The 1953 amendment inserted the second paragraph. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the second paragraph. The 1957 amendment inserted the second proviso in the second paragraph, and changed "14 days" to "21 days" in the latter part of the paragraph.

The 1961 amendment added the proviso at the end of the first sentence of the first paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment. It also added nearby the following: "when ordered by the county board of elections and approved by a majority of the board of county commissioners."

Time for Books to Remain Open.—Where the charter of a city or town provides that for the issuance of bonds an election shall be held "under the rules and regulations presented by law for regular elections," it refers to this section, requiring that the books of registration shall be kept open for twenty days (now two weeks); and construing this section in connection with § 160-37, it is held, that the former is for the purpose of a new and original registration, and the latter, in providing for only seven days, is for the purpose of revising the registration books so that electors may be registered whose names are not on the former books. Hardee v. Henderson, 170 N. C. 572, 87 S. E. 498 (1916).

Substantial Compliance Is All That Is Necessary.—The statutory requirement that the registration be kept open and accessible for a specified time, is regarded as essential by the courts in passing upon the validity of bonds to be issued by a municipality; but where it appears that the books were afterwards opened for a time actually sufficient to afford all an opportunity to register, though short of the legal period, and it further appears that the election has been hotly contested by both sides, it shall be deemed sufficient. Hill v. Skinner, 169 N. C. 405, 86 S. E. 351 (1915).

Effect of Noncompliance on Bond Issue.—The failure to keep the registry, for the question of the issuance of bonds in a special school district, open for twenty days (now two weeks), etc., required by this section, does not of itself render invalid the issuance of the bonds accordingly approved when it appears that the matter was fully known and discussed, opportunity offered every voter to register, there was nothing to show that every elector desiring to vote had not done so, and there was no opposition to the measure manifested. Hammond v. McRae, 182 N. C. 747, 110 S. E. 102 (1921).

Presence of Registrar Every Moment of Time Not Necessary.—The requirements of this section do not require the registrar to be at his home or place of registration every moment of the twenty days (now two weeks) between the hours indicated, and a reasonable compliance is all that is necessary. Younts v. Commissioners, 151 N. C. 582, 66 S. E. 575 (1909).

§ 163-31.1. When registration a qualification to vote in certain counties having loose-leaf and visible registration system.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, no registration shall be a qualification to vote in a particular primary election or general election, unless the same shall have been made by the elector not less than 21 days next preceding the primary election or general election to be held. (1953, c. 843; 1955, c. 800; 1957, c. 784, s. 4; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1957 amendment changed "14 days" to "21 days" near the end of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-31.2. Permanent registration in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time registration as authorized by G. S. 163-31, such registration shall be a permanent public record of registration and qualification to vote, and the same shall not thereafter be cancelled and a new registration ordered, either by precinct or countywide, unless such registration has been lost or destroyed by theft, fire or other hazard. In the event of any division of precincts or change in boundaries the county board of elections shall not cancel the existing registration or order a new registration, but said county board of elections shall immediately correct the existing precinct registration to conform to such division or change. To the end that such permanent registration shall be purged of those registered electors who have died or who have become unqualified to vote since registration, the register of deeds of such county shall immediately furnish to the county board of elections a certification of all death certificates recorded in his office and, upon receipt thereof the county board of elections shall cause the name of any person appearing upon such certification of death to be removed from the registration books or permanent records of registration of such county; and, in addition, the county board of elections of such county is authorized to remove from the registration books or permanent records of registration the names of all persons who have failed to vote, according to the poll or other record of voting of such county board of elections, for a period of six years. Nothing herein shall prohibit the county board of elections from restoring the names of persons whose names have been removed from the registration books or permanent records of registration, upon proof that such person is not dead or that such person has voted within the county within said six year period. And nothing herein shall prohibit a person whose name has been removed from the registration book, or permanent registration record of such county, for failure to vote for six consecutive years, from re-registering in the manner provided by law. Prior to the removal of the name of any person from the registration books or permanent records of registration for failure to vote, as hereinbefore authorized, the county board of elections shall cause to be mailed to such person, at the address shown by the registration books or permanent records of registration, notice to show cause, and such registration shall not be removed, if such person shall appear and show that such qualifications still exist. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-31.3. Municipal corporations authorized to use county registration books.—Any city, town or municipal corporation is hereby authorized and empowered to use, in its discretion and upon such terms and conditions as may be mutually agreed upon by the governing body thereof and the board of commissioners of the county in which such city, town or municipal corporation is located, the registration books, process or records of such county for the registration of voters or the acceptance of registration applications, and in such event the provisions of law which are applicable to the registration of voters in such county shall apply to such city, town or municipal corporation for the purpose of any primary, general, regular or special election.

All elections heretofore held or ordered to be held by any city, town or municipal corporation in which the registration books, process or records of the county in which the city, town or municipal corporation is located were used or ordered to be used are hereby in all respects ratified, validated and confirmed. (1955, c. 763.)

Article 8.

Permanent Registration.

§ **163-32. Persons entitled to permanent registration.**—Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall, prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the State of North Carolina; I am ...... years of age. I was, on the first day of January, A.D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ...., in which I then resided (or, I am a lineal descendant of ...., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ...., wherein he then resided). (1901, c. 550, s. 1; Rev., s. 4325; C. S., s. 5949.)

Registration on Permanent Roll Does Not Dispense with new Registration.—The fact that a voter is registered on the permanent roll does not dispense with the necessity of his registering anew in order to become a qualified voter, whenever required by the statutes regulating the registration of voters. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

Object of Permanent Roll.—The making of a permanent roll or record was intended to be done for the sole purpose of furnishing convenient and easily available evidence of the fact that those whose names appear thereon are not required to have the educational qualification. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

Cited in Lassiter v. Northampton County Board of Elections, 360 U. S. 45, 79 S. Ct. 985, 3 L. Ed. (2d) 1072 (1959).

§ **163-33. Oaths administered; names recorded.**—It shall be the duty of the officer charged with the registration of voters in all such elections held in this State until November first, one thousand nine hundred and eight, to administer such oaths and to record the name of such person on his roll of registered and qualified voters; and all registration under this article and under the said section of the Constitution shall be had and taken at the times and places provided by law for registration of voters for all such elections in this State until November first, one thousand nine hundred and eight. (1901, c. 550, s. 2; Rev., s. 4326; C. S., s. 5950.)

§ **163-34. Registrar to return list to clerk of court; record.**—It shall be the duty of such registration officer, within five days after the close of the election, to return to the clerk of the superior court of the county in which he resides a list of the names of all the persons so registered by him, stating therein the name and age of such person, and the name of the person from whom descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, and the state wherein he or his ancestor was a voter, and the date on which he applied for registration, and it shall be the duty of the clerk of the superior court, within ten days after receipt of said list, to make an alphabetical roll by townships of all persons taking such oath and registered by such registrar, and to record the same in a book to be provided for that purpose, which said book shall contain the name and age of such person, the name of the person from whom he was descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, the state in which he was such voter and the date he applied for registration. And the said roll shall, during the office hours of said clerk, be open to the inspection of the public. (1901, c. 550, s. 3; 1903, c. 557; Rev., s. 4327; C. S., s. 5951.)

§ **163-35. Clerks to certify list to Secretary of State.**—It shall be the duty of the several clerks of the superior courts of this State to certify to the Secretary of State, within thirty days after the close of each election, a copy of the said roll in his office, and it shall be the duty of the Secretary of State to record, in a book provided for that purpose, the facts set out in such certified copy, and keep the lists from each county separate. The clerk of the superior court shall keep the lists from each township in separate columns. The books kept by such clerks and the Secretary of State shall be plainly lettered "Permanent Roll of Registered Voters," and they shall prepare a complete alphabetical index to the same. And for recording and indexing such names the clerks of the superior courts shall receive as compensation ten cents for each copy-sheet, to be paid by the county commissioners. (1901, c. 550, s. 4; 1903, c. 557, s. 2; Rev., s. 4328; C. S., s. 5952.)

§ **163-36. How permanent roll prepared and certified; certified copies from roll.**—It shall be the duty of all officers charged with the registration of voters in any election held in the State to enter the name of such person on the registration book and voting lists of his township, ward, or precinct, and to give a certificate in the following form:

I, ..., registrar for .... township (ward or precinct) of .... county, do hereby certify that on this day .... of .... race, of .... county, ... township, ... precinct (or ward), age ...... years, took and subscribed the oath required by law, and has this day been registered on the permanent roll as a voter in said township (ward or precinct), in accordance with section four, article six, of the Constitution of North Carolina.

This the ...... day of ...., 19...

....

Registrar.

And it shall be the duty of the clerk of the superior court to certify, under his hand and seal, to the genuineness of such certificate as follows:

North Carolina, ... County.

I, ..., clerk of the superior court of the aforesaid county, do hereby certify that the foregoing certificate is in due form, and that the signature of said ...., registrar of said precinct (ward or township), is in his own proper handwriting.

Witness my hand and official seal, this the ...... day of ...., 19...

........................,

Clerk of the Superior Court.

And for furnishing such certificates and administering such oaths neither the said registrar nor clerk shall be paid any compensation by the person so applying for registration. In the event of the loss of such certificate the person entitled to the same, upon the payment of twenty-five cents, may obtain from the clerk of the superior court, or from the Secretary of State, a certificate under his official seal to the effect that his name is on the permanent roll of registered voters from his county, in his office, and such certificate shall, in all respects, take the place of such original, and be used as such. (1901, c. 550, s. 5; Rev., s. 4329; C. S., s. 5953.)

§ **163-37. When copy of roll obtainable by clerk from Secretary of State.**—In the event of loss or destruction of such rolls in the clerk's office, it shall be his duty to obtain from the Secretary of State a certified copy of said roll for his county, and such certified copy shall be good and effectual for all purposes as the original would have been. (1901, c. 550, s. 6; Rev., s. 4330; C. S., s. 5954.)

§ **163-38. Copy of, or certificate from roll evidence of voter's rights.**—In all suits involving the right to vote, or trying the title to office, or other action in which such rolls are produced in evidence, all of the facts and recitals therein shall be taken as prima facie evidence of such facts and recitals, and if the right of any voter upon such rolls to vote is challenged, either his certificate or a certified copy of such permanent roll shall be deemed prima facie evidence of his right to vote. (1901, c. 550, s. 7; Rev., s. 4331; C. S., s. 5955.)

§ **163-39. Registration of voters removing residence.**—Whenever any voter so registered shall remove from one precinct to another in the same county, or from one county to another in the State, he shall make application for registration, and upon production of his certificate of his being on the permanent roll, as provided in this article, under the hand and seal of either the clerk of the superior court or of the Secretary of State, and proof of his identity, the proper officer charged with the registration of voters shall register his name and make record of the same as in cases of original registration under this chapter. (1901, c. 550, s. 8; Rev., s. 4332; C. S., s. 5956.)

§ **163-40. Educational qualification not applicable to permanent registrants.**—Any person holding a certificate of registration, as herein provided, shall be entitled to register in any county in this State, notwithstanding his inability to read and write: Provided, that he shall be otherwise qualified as an elector. (1901, c. 550, s. 9; Rev., s. 4333; C. S., s. 5957.)

§ **163-41. State Board of Elections furnishes necessary blanks.**—The State Board of Elections shall procure, provide, and furnish to the several officers named in this article and charged with duties under it, all such books, blanks, and other printed matter as may be necessary to carry into effect the provisions of this article. (1901, c. 550, s. 10; Rev., s. 4334; C. S., s. 5958; 1921, c. 181, s. 4.)

Editor's Note.—The duties now devolving upon the State Board of Elections, were, prior to the 1921 amendment, imposed upon the Secretary of State.

§ **163-42. Books constitute roll in Secretary of State's office.**—The books containing the permanent roll of registered voters, sent to the office of the Secretary of State by clerks of the courts of the several counties, shall be and constitute the permanent roll of registered voters, required by this article to be kept in the office of the Secretary of State, and such books shall be deemed a full and complete compliance with the requirements of this article. It shall be the duty of the several clerks of the court, within thirty days after the close of each registration hereafter to be held, up to the first day of December, one thousand nine hundred and eight, to forward to the Secretary of State the names of all persons registering under article six, section four, of the Constitution of North Carolina, as required by this article, and it shall be the duty of the Secretary of State to record such names in the permanent roll of registered voters for the several counties. (1903, c. 178; Rev., s. 4335; C. S., s. 5959.)

ARTICLE 9.

New State-Wide Registration of Voters.

§ **163-43. State-wide revision of registration books and relisting of voters in one general registration book.**—Prior to the next State-wide primary election of 1950 there shall be a revision made of the registration books and a relisting of the registered voters into one new general registration book for each and every precinct in the State in the manner hereinafter provided. The State Board of Elections shall, as soon as possible after April 13, 1949, meet and adopt a new form of a general registration book to be substituted for the separate party primary registration books and the general election registration book now used in each voting precinct in this State, which new general registration book shall be the only kind of registration book to be used hereafter in each precinct in all primaries and general elections held in this State: Provided, any county board of elections, by and with the approval of a majority of the board of county commissioners, shall have the authority to order and to install a modern loose-leaf registration book system in any one or all of the voting precincts of the county. The new general registration book shall be so prepared as to contain all of the information pertaining to a registered voter now required by law, except the new registration book shall also contain a column or space to enter the party affiliation of each registered voter. The new registration book shall also have printed on each page thereof a column index giving the first two letters of the surnames and the pages where such voters are registered so that a registrar can turn immediately to the page where a voter is registered and find the name.

The State Board of Elections shall, through the State Department of Purchase and Contract, order the printing or purchase of a sufficient number of the said new general registration books to furnish one for each voting precinct in the State, the cost of which shall be paid for by the State out of the contingency and emergency fund. (1939, c. 263, s. 1; 1949, c. 916, s. 1; 1961, c. 381.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

The 1961 amendment rewrote the proviso following the second sentence.

For comment on the former enactment, see 17 N. C. Law Rev. 356.

§ 163-43.1. Procedure for registration in certain counties having loose-leaf and visible registration system.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the registration shall be made and kept upon such form or forms as shall be prescribed by the county board of elections, shall contain all information necessary to show qualification to register and shall be signed and sworn to by the registering elector. If the registering elector cannot write because of physical disability, or if the elector cannot read and write and is qualified to register under Article VI, section 4 of the North Carolina Constitution and the acts of the General Assembly made pursuant thereto, then the name of such elector shall be signed by the registrar, or the special registration commissioner, but the specific reason for the failure of the elector to sign the registration certificate shall be clearly stated upon the face of the registration certificate. All original registration certificates shall be kept by the county board of elections in a safe place to be provided by the board of county commissioners of the county. An exact typewritten, mimeographed or printed duplicate or copy shall be made by the county board of elections of each original registration certificate which duplicate shall be placed in the proper precinct registration book in lieu of the original. Such duplicates in the precinct registration books, properly certified by the county board of elections, shall be the official precinct registration books of the county for the purpose of holding all primaries, general elections and other elections whatsoever; provided, however, that the original registration certificates shall at all times be the official and sole evidence of registration and the county board of elections shall have the power to correct the duplicates in the precinct registration books to conform to the original registration certificates at any time whatsoever, including the day of any primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-44. State Board of Elections to distribute new registration books and instruct county election officials.—As soon as the new general registration books have been printed the State Board of Elections shall furnish to the chairman of each county board of elections in this State a sufficient number of the new registration books to supply one for each voting precinct in each county. These books shall be distributed to the county election chairman in time for the names from the old primary and general election registration books to be transferred to the new book prior to the 1950 registration period. The State Board of Elections shall also furnish written instructions to each county election chairman and to the various registrars as to their duties with respect to the use of the new general registration book system. (1949, c. 916, s. 2.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 2.

§ 163-45. County election board chairman to deliver new registration books to registrars and instruct them on their use.—After the receipt of the new registration books by a chairman of a county election board from the State Board of Elections, the chairman shall call a meeting of all of the registrars in his county for the purpose of delivering said new books to his registrars and instructing the registrars as to their duties relative thereto. Each registrar shall be entitled to be paid compensation and travel expense by the county for attending this meeting. (1949, c. 916, s. 3.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 2½.

§ 163-46. How new general registration book is to be used by registrar.—It shall be the duty of each registrar, after receiving his new general registration book from the chairman, to transcribe to the new general registration book in alphabetical order the names of all persons who are registered in the present party primary and general election registration books and shall indicate opposite the name of each registrant, in the column showing party affiliation, the political party affiliation of each such registrant as shown on the present party primary registration book, in which such person is now registered. In those cases where a person is now registered in the general election registration book and is not registered in a party primary registration book, no party affiliation will be placed opposite the name of such person when transcribed on the new book, but such person will not be permitted to vote in any party primary held thereafter unless or until such person declares his party affiliation to the registrar on the day of a party primary or registration period, and then only in the primary of such political party with which such person so declares his or her party affiliation and requests the registrar to record that party affiliation opposite his or her name on the new registration book.

It shall likewise be the duty of a registrar, when any person applies for new registration during the regular registration periods held hereafter prior to any primary or general election, to request the applicant to state his or her political party affiliation and record that party affiliation on the new book opposite the name. If such applicant refuses to declare his or her party affiliation upon request, then the registrar shall register such applicant's name, if found qualified to register, on the new registration book without indicating any party affiliation opposite the name, but the registrar shall then advise such person that he or she cannot vote in any party primary election but only in a general election held thereafter. If such applicant for registration states to the registrar that he or she is an independent, indicating affiliation with no political party, the registrar shall register such applicant as an independent, if found qualified to register, and shall likewise advise such person that he or she cannot vote in any party primary election held thereafter as he or she does not affiliate with any political party: Provided, that in all cases where no party affiliation was recorded in the registration book opposite the name of any registered elector, but not including those registered as Independents, any such registered elector may on primary election day appear before his or her registrar and declare his or her party affiliation to the registrar, and the registrar shall, upon such elector's taking an oath to support in the next general election the nominees of the party with which he then declared his affiliation, record such declared party affiliation of such elector opposite the name of such elector on the registration book, and permit such elector to vote in the primary of such party as thus declared and recorded. Such recorded party affiliation on the registration book shall thereafter be permanent unless, or until, the same shall be changed by such elector in accordance with the provisions of § 163-50 of the General Statutes.

In transcribing the names of registrants from the old books to the new general registration book, the registrar shall not transcribe the names of any persons known to the registrar to be dead, or who have moved their permanent residence to another precinct, county or state; however, if any person whose name has been so removed from the books because of removal of residence should appear at the same polling place on election day and satisfy the registrar that he or she is entitled under the law to vote in that precinct, the registrar shall put such person's name back on the new book on election day and be permitted to vote there.

In lieu of a registrar transcribing the names of registrants from the old to the new general registration book, the county board of elections, in its discretion, may employ such clerks or assistants as it may desire to do the work.

Each registrar, or other persons, who transcribes the names of registrants from the old books to the new registration book shall be paid such compensation for same as the county board of commissioners may fix as proper. (1949, c. 916, s. 4; 1955, c. 871, s. 3.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 3.

The 1955 amendment added the proviso and the last sentence to the second paragraph.

§ **163-47. New registration in discretion of county board of elections.**—In lieu of the procedure prescribed in this article for the transcription of registrants from the present registration books to the new general registration book, any county board of elections may, in its discretion, order a new registration of the voters in any county or precincts, but in any new registration only the new general registration book shall be used in each precinct, and the party affiliation of the new registrants indicated thereon. (1939, c. 263, s. 2½; 1949, c. 916, s. 5.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ **163-48. Registration and poll books to be returned to chairman of county election board.**—On the day of the county canvass of votes after a primary or an election, each registrar shall return the registration book and the poll book for his precinct to the chairman of the county board of elections. The registrars shall be responsible for the safekeeping of the registration and poll books while in their custody. (1939, c. 263, s. 3½; 1949, c. 916, s. 6.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section.

§ **163-49. Chairman of county board of elections to keep registration books.**—When not in use for a primary or an election, all of the registration books and poll books shall be in the custody and safekeeping of the chairman of the county board of elections. It shall be his duty to keep these books in a safe and secure place where they may not be tampered with, stolen or destroyed, and, if possible, they shall be kept in a fireproof vault. The chairman may, in his discretion, permit these books while in his custody to be inspected or copied, but only under his supervision. (1949, c. 916, s. 7.)

Editor's Note.—The 1949 act repealed the former section and substituted therefor the present section. The former section was codified from Public Laws 1939, c. 263, s. 5.

§ 163-49.1. Custody, etc., of records of registration in counties having loose-leaf and visible registration system.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, the registration books, registration certificates, indexes and other records of registration shall be and remain in the possession of the county board of elections, and such board of elections may, by a majority vote, direct the supervision and control of same, through such officers, secretaries and clerks as it may see fit to designate. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-50. Change of party affiliation.—No registered elector shall be permitted to change his party affiliation for a primary or second primary after the close of the registration period. Any elector who desires to change his party affiliation for a primary from the registration book on which registered to that of another party shall, during the registration period only, go to the registrar of his precinct and request that such change be made on the general registration books. Before being permitted to change his party affiliation, for the purpose of participating in a primary election, however, such elector shall be required by the registrar to take the oath of party loyalty to the party to which he wishes to now affiliate, and the registrar shall thereupon administer to the said elector the following oath:

I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the .... party to the .... party, and that such change of affiliation be made on the party registration books, and I further solemnly swear (or affirm) that I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law, so help me God.

If at any time the chairman of the board of elections or the registrar of any precinct shall be satisfied that an error has been made in designating the party affiliation of any voter on the general registration book then and in all such events the chairman of the county board of elections or the registrar, having the custody of the registration book may make the necessary correction upon the voter taking the oath of party loyalty in substance of the form set forth in this section.

Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, any elector who desires to change his party affiliation for a primary election from the registration book or records of registration on which registered to that of another party shall, not less than 21 days prior to such primary election, file with the county board of elections, or with any registrar, or with any special registration commissioner, an affidavit in the form of the oath hereinbefore set forth, and thereupon the county board of elections shall immediately change the party affiliation of such elector to conform to such affidavit, and thereafter such elector shall be considered registered and qualified to vote in the primary election of the new party designated by said affidavit: Provided, however, that the county board of elections shall have the authority to require the elector desiring to change his party affiliation in accordance with the provisions of this section to file the required affidavit with the registrar of the precinct, ward, or election district in which the elector is registered, or with the special registration commissioner authorized by the said board to receive the said affidavit, or with the county board of elections. (1939, c. 263, s. 6; 1949, c. 916, s. 8; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 5; 1963, c. 303, s. 1.)

Editor's Note.—The 1949 amendment substituted the words "general registration books" for the words "party primary books" at the end of the second sentence. It also substituted "general registration book" for "primary registration books" in the third paragraph.

The 1953 amendment added the last paragraph. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the last paragraph. The 1957 amendment added the proviso at the end of the last paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-51. Willful violations made misdemeanor.—Any chairman of a county board of elections or any registrar who willfully and knowingly refuses or fails to comply with the provisions of this article with respect to his duties as herein specified shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine, imprisonment, or both, in the discretion of the court. (1939, c. 263, s. 7; 1949, c. 916, s. 9.)

Editor's Note.—The 1949 amendment inserted "or any registrar" and struck out all of the former second paragraph relating to violations by registrars.

§ 163-52. Removal of chairman of county board for violations; appointment of successor.—The State Board of Elections shall have the authority to summarily remove any chairman of a county board of elections who fails or refuses to comply with any of the duties placed upon him by the provisions of this article, and shall thereupon request the chairman of the State Executive Committee to recommend a person to succeed the member removed from said county board of elections, which said person shall thereupon be appointed by the State Board of Elections as the chairman of such county board of elections. (1939, c. 263, s. 8.)

Article 10.

Absent Voters.

§ 163-53. Registration of voters expecting to be absent during registration period.—Any citizen of the State, not duly registered, who may be qualified to vote under the Constitution and laws of this State, and who expects to be absent from the county in which he lives during the usual period provided for registration of voters, may be registered as herein provided. The State Board of Elections shall furnish to the chairman of the county board of elections in each county a book for the registration of absent electors, which book shall contain separate columns for the name of elector, name of precinct in which elector resides, age, place of birth, race, and precinct in which elector last resided. It shall be the duty of the chairman of the board of elections in each county to register on said county registration book any qualified elector who presents himself for registration at any time other than the usual registration period, and who expects to be absent from the voting precinct in which he resides during the usual registration period, if found to be otherwise entitled to registration, in the same manner as now provided by law for the registration of voters before the precinct registrar in the usual registration period. The chairman of the county board of elections shall, immediately after the appointment of a registrar or registrars for any election to be held in his county, either legalized primary or general election, either for the county or for any political subdivision thereof, certify to the respective registrars in each of such precincts the names, age, and residence, place of birth, etc., of any electors registered on the said county registration book and thereby entitled to vote in such precinct; and it shall be the duty of the registrar in every such precinct to enter upon the regular registration book for such precinct the names of all such electors so certified to him by the chairman of the county board of elections, marking opposite the names of such electors the words "Registered before chairman county board of elections"; and electors so registered shall be entitled to vote in any election in such precinct in the same manner as if registered by the precinct registrar. (1917, c. 23, s. 2; C. S., s. 5961.)

Local Modification.—Graham, as to whole article: 1959, c. 780, s. 1.

§ 163-54. Who may vote an absentee ballot.—Any qualified voter of the State who expects to be absent from the county in which he is a qualified elector during the entire period that the polls are open on the day of a State-wide general election; or who because of sickness or other physical disability will be unable to be present at the polls to vote in person on the day of a State-wide general election, may vote at such election in the manner as hereinafter provided in this article. (1939, c. 159, s. 1; 1963, c. 457, s. 1.)

Local Modification.—Jackson: 1939, c. 309; Sampson 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1963 amendment rewrote this section.

As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N. C. Law Rev. 355.

Under Former Law.—For cases decided under the former law, see Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346 (1920), holding law valid; Davis v. Board, 186 N. C. 227, 119 S. E. 372 (1923), holding provision requiring certificate or affidavit to be mandatory; State v. Jackson, 183 N. C. 695, 110 S. E. 593 (1922), holding that persons within county were not entitled to vote as absentees; Boulding v. Davis, 200 N. C. 24, 156 S. E. 103 (1930), holding that jurat was prima facie evidence only that ballots had been sworn to; Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936), holding law applicable to municipal elections.

The provision of the former law that election laws be construed in favor of the right to vote was held not to apply when the elector desires to avail himself of a special privilege and does not, of his own volition, comply with the conditions precedent prescribed by the statute, which gives him the right to do so. Davis v. County Board, 186 N. C. 227, 119 S. E. 372 (1923).

Effect of Mistake or Misconduct of Election Officials.—Persons in all respects qualified to cast absentee ballots will not be disfranchised for the mistake or even willful misconduct of election officials in performing their duties when the mistake or misconduct does not amount to coercion, fraud or imposition and it appears that the ballots expressed only the free choices of the electors themselves. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-55. Application for absentee ballot; form of application.—Any voter as defined in the foregoing section expecting to vote an absentee ballot in any State-wide general election may apply for an absentee ballot not more than forty-five (45) days, nor after 6:00 o'clock P. M. on Wednesday, the fifth day prior to the election; provided that in the case of an unexpected illness or physical disability occurring to any elector after 6:00 o'clock P. M. on Wednesday, the fifth day before the election, up until 10:00 o'clock A. M. on Monday before the election, such elector may be able to apply for an absentee ballot in the manner hereinafter prescribed.

(1) Expected Absence from County on Election Day.—Such voter expecting to be absent from the county of his or her residence during the entire period that the polls will be open on election day, shall apply in writing to the chairman of the county board of elections of applicant's residence, for an absentee ballot not more than forty-five (45), nor less than five (5), days, prior to the election. Such application shall be made on an application form to be furnished by the chairman of the county board of elections only, which application form shall be signed by the voters personally, and shall be sworn to before any officer with a seal who is authorized to administer an oath. Such officer shall sign the certificate at the bottom of the application and shall place his official seal thereon. The application form, when properly filled out, signed, sworn and certified to, shall be transmitted by mail or delivered in person by such voter to the chairman of the county board of elections of applicant's residence. The application form for use by such absent voter shall be as follows:

APPLICATION AND AFFIDAVIT FOR BALLOT BY ELECTOR WHO EXPECTS TO BE ABSENT FROM COUNTY ON ELECTION DAY

(Anyone falsifying this statement is subject to a
fine or imprisonment, or both.)

Application No. .... (Issued to:) ....
(To be filled in before issuance)

State of ....
County of ....

I, ..., do solemnly swear that I am a registered voter residing in .... precinct, ... township, in the County of ...., N. C., and that I am lawfully entitled to vote in such precinct at the general election to be held therein on the .... day of ...., 19. . ; that I expect to be absent from the county of my residence during the entire period that the polls are open on the day of holding such general election, and that I will have no opportunity to vote in person on that day.

I hereby make application for an official ballot or ballots to be voted by me at such election, and I will return said ballot, or ballots, by mail or deliver same in person to the chairman of my county board of elections prior to 12:00 o'clock noon, on Saturday preceding such election.

....
(Signature of voter)

....
(P.O. Address to which ballot
is to be mailed.)

....
(Signature of officer adminis-
tering oath)

Subscribed and sworn to by ...., before me this .... day of ...., 19.....

....
(Address of such officer)

(SEAL)

(2) Absence for Protracted Illness or Physical Disability Occurring More than Five (5) Days before the Election.—Any voter expecting to be unable to go to the polls to vote in person on election day, either because of protracted illness or physical disability occurring more than five (5) days before the election, shall apply in writing to the chairman of the county board of elections of his or her residence for an absentee ballot. Such application shall be made within the time and in the manner as provided in subdivision (1) above. The application form for such voter shall be as follows:

APPLICATION AND AFFIDAVIT FOR BALLOT BY ELECTOR WHO EXPECTS TO BE UNABLE TO GO TO POLLS BECAUSE OF PROTRACTED ILLNESS OR PHYSICAL DISABILITY OCCURRING MORE THAN FIVE (5) DAYS PRIOR TO ELECTION.

(Anyone falsifying this statement is subject to a
fine or imprisonment, or both.)

Application No. .... (Issued to:) ....
(To be filled in before issuance)

State of North Carolina
County of ....

I, ..., do solemnly swear that I am a registered voter residing in .... precinct, ... township, in the County of ...., N. C., and that I am lawfully entitled to vote in such precinct at the general election to be held therein on the .... day of ...., 19....; that by reason of protracted illness or physical disability, to wit:

.... I will be unable to travel from my home,
(Give nature of illness or disability)
or place of confinement, to the voting place in my precinct on election day.

I hereby make application for an official ballot or ballots to be voted by me at such election, and I will return said ballot, or ballots, to the chairman of my county board of elections prior to 12:00 o'clock, noon, on Saturday preceding such election.

....
(Signature of voter or applicant)

....
(P.O. Address to which ballot
is to be mailed.)

Subscribed and sworn to by ...., before me this the .... day of ...., 19..

....
(Signature of officer administering oath)

(SEAL)

(3) Absence Because of Illness or Physical Disability Arising after 6:00 o'clock P. M. on the Fifth Day before Election.—Any voter who becomes unable to go to the polls to vote in person on election day because of unexpected illness or physical disability, arising after 6:00 P. M. on the fifth day before the election, may apply in writing to the chairman of the county board of elections of his or her residence for an absentee ballot, not more than five (5) days prior to the election on application form to be furnished by the chairman of the county board of elections only. The chairman shall not issue or accept such application after 10:00 o'clock A. M. on Monday preceding election day. The application form must be filled in and signed by the voter or by his or her husband, wife, brother, sister, parent or child only when voter's illness or disability has occurred within five (5) days before the election. The application form must be signed in the presence of a subscribing witness, and the certificate on the bottom of the application form must be filled in by an attending licensed physician in the State and signed by said physician in the presence of a subscribing witness, and containing the correct address of said certifying physician and witness. Such application form, when properly filled out, signed by the voter or applicant as herein provided, and his subscribing witness, with the signature of the attending physician and his subscribing witness, may be transmitted by such voter to the chairman of the county board of elections of his or her residence, by mail or by a member of voter's immediate family as above described. The application form for use by such voter shall be as follows:

APPLICATION AND CERTIFICATE OF PHYSICIAN FOR BALLOT BY SICK OR PHYSICALLY DISABLED VOTER WHO CANNOT ATTEND POLLS TO VOTE DUE TO UNEXPECTED ILLNESS OR PHYSICAL DISABILITY ARISING AFTER 6:00 O'CLOCK P. M. ON THE FIFTH DAY BEFORE THE ELECTION.

(Anyone falsifying this statement is subject to a
fine or imprisonment, or both.)

Application No. .... (Issued to:) ....
(To be filled in before issuance)

State of ....
County of ....

I, ..., do hereby certify that I am a registered voter residing in .... precinct, ... township, in the County of ....,

N. C., and that I am lawfully entitled to vote in such precinct at the general election to be held therein on the .... day of ...., 19..; that by reason of unexpected illness, or other physical disability arising since 6:00 o'clock P. M. last Wednesday, I will be unable to travel from my home, or place of confinement, to the voting place in my precinct on election day.

I hereby make application for an official ballot, or ballots, to be voted by me at such election, and I will transmit said ballot, or ballots, to the chairman of the county board of elections of my county prior to 3:00 o'clock P. M. on election day.

This .... day of ...., 19..

....
(Signature of voter or applicant)

....
(Address to which ballot to be delivered)

....
(Relationship of person applying for voter if not signed by voter)

Witness: ....
(Signature of witness)

....
(Address of witness)

State of ....
County of ....

I, ..., do hereby certify that I am a physician, duly licensed to practice medicine in the State of ....; that I have examined .... on .... for a sudden illness or physical disability occurring since 6:00 o'clock P. M. last Wednesday, and that I believe that he (or she) will be physically incapable of being at the polls at said election on the .... day of ...., 19.., for the following reasons:

(voter's name) (date)

....

This .... day of ...., 19...

....
(Signature of physician)

....
(Address of physician)

Witness: ....
(Signature of witness)

....
(Address of witness)

(4) Application Forms Issued by Chairman Only; Procedure.—The chairman of the county board of elections shall keep all absentee ballot applications in his custody and shall issue no more than one to a voter unless the application is returned to the chairman and marked "Void" by him. In such event, the chairman may issue another application form to an authorized person; but the chairman shall retain the "Void" application in his records. At the time of issuance of an application, the chairman shall number the application and shall write the voter's name in the space provided therefor at the top of the application. The chairman may deliver the application to the voter personally at the office of the county board of elections, or he may mail the application to an absent voter upon receipt of written request from the voter. The chairman shall not entrust any other person to deliver an application to the voter, nor shall he mail an application to a voter who has not made written request for such application, except as provided in this article.

(5) Applications and Absentee Ballots Transmitted by Mail or in Person.—

An application for an absentee ballot may be made only by the voter applying for same, and shall be valid only when transmitted by the voter in person, or by the United States mail to the county board of elections. No other person shall make or sign any application for a voter except as herein provided. Likewise, all absentee ballots approved and issued by the county board of elections shall be transmitted by it to the voter applying for same person or by mail to the post-office address set out in the application. Likewise, all executed absentee ballots returned to the county board shall be transmitted by the voter in person or by mail addressed to the chairman of the county board of elections and must be received by the chairman of the county board of elections not later than 12:00 o'clock noon on the Saturday just preceding the State-wide general election to be accepted for voting: Provided, that the provisions of (3) above shall apply as to voters who become unexpectedly ill or disabled within five (5) days of the election and such absentee ballots may be received by the chairman up to 3:00 o'clock P. M. on election day. Upon the approval of the application of a voter having unexpected illness or physical disability arising within five (5) days of the election, the sealed envelope containing the absentee ballots may be delivered to the voter by a member of the voter's immediate family, and may also be delivered back to the chairman by a member of the voter's immediate family.

The time limit herein provided for applications to be made for absentee ballots is not applicable to servicemen. (1939, c. 159, s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Cross Reference.—See notes to §§ 163-54, 163-56, 163-58.

Editor's Note.—The 1943 amendment made additions to the former first paragraph.

The 1963 amendment rewrote this section.

Applied in State v. Chaplin, 238 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-56. Procedure for issuance of absentee ballot by county board.—The procedure to be followed in receiving, passing upon the validity of the application, and the issuance of the absentee ballots to the absent voter shall be as follows:

(1) Record of Applications Received and Ballots Issued.—Upon receipt of the written application from a voter applying for an absentee ballot, provided it is received within the time prescribed in the foregoing section, the chairman of the county board of elections shall promptly enter on the Register of Absentee Applications and Ballots Issued supplied to him by the State Board of Elections for the purpose, the following information with respect to paragraphs a through f below:

a. Name of voter applying for absentee ballot.
b. Number of the application.
c. Precinct in which applicant is registered.
d. Address to which ballot to be mailed.
e. Reason assigned for request for ballot.
f. Date of receipt of application.
g. Approval or disapproval of application by county board of elections and date of same.
h. Date absentee ballots mailed or delivered to voter if approved by board.

(g and h above to be completed after application is approved or disapproved by county board.)

(2) Determination of Validity of Applications by County Board of Elections.—The county board of elections in each county shall constitute the proper official body to pass upon the validity of all applications for absentee ballots, and not just the chairman of said board. Between the time when an application may be first made by an absent voter forty-five (45) days

prior to a State-wide general election, and when the time closes for voters to apply five (5) days before such election, the county board of elections shall hold public meetings weekly at 10:00 o'clock A. M. on each Monday and Friday, and on Monday preceding election day at 10:00 o'clock A. M., at the courthouse or office of said board, to pass upon all absentee applications received by the board or chairman. It will not be necessary for the chairman to give notice of each such weekly meetings to the members of the board, as the time and place is fixed by statute. At such meetings any elector of the county may be heard and allowed to present evidence in opposition to, or in favor of, the issuance of an absentee ballot to the voter making application therefor. The chairman shall present to the board meeting the applications received during the preceding week, together with the container envelope, provided that where said application was delivered in person by the voter, only the application shall be presented to the board. The county board of elections, by a majority vote, shall pass upon the validity of each application received for an absentee ballot, and only the applications so approved shall be accepted for absentee voting purposes. The chairman of the county board of elections shall note on the Register of Absentee Applications opposite the name of each applicant whether such application was approved or disapproved by the county board of elections at its last weekly meeting held for the purpose, and also the date when the absentee ballot was mailed or delivered to absent voter, if approved. The board may consider the registration book evidence of the voter's signature, or other evidence that may be necessary to pass upon such applications. The decision of the county board of elections on the validity of such applications shall be final, subject only to such review as may be necessary in the event of an election contest, and in the event an application for a ballot previously voted in person by a voter, shall be declared invalid, such ballot voted pursuant thereto, shall be void subject only to such review as hereinabove provided.

(3) Delivery of Absentee Ballots and Envelopes to Applicant.—If the board shall find that the applicant is a qualified voter of the county and precinct containing his or her residence as stated in the application, and that the application of the voter is in proper form, the chairman of the board shall, by mail only, except as is otherwise provided herein, transmit to the applicant at the address designated by the voter on the application, an official ballot of each kind to be used in said election. Before mailing or delivering same to the voter, the chairman shall write or type on the top margin of each kind of regular ballot the following: "Absentee Ballot No. . . . . ", filling in the number which shall be the same number of such voter's application as entered on the Register of Absentee Applications. This number as entered on each ballot issued shall be for the purpose of identifying the voter of such ballot in the event of a contest. No other writing or printing or signing of the ballot for absentee voting purposes shall appear on the ballot. Separate absentee ballots shall not be printed, as only the regular official ballots as are to be voted by electors voting in person shall be used for absentee voting. The chairman of the county board of elections shall fold and enclose each kind of such absentee ballots, after filling out the number on the top margin of each one, in the container-return envelope as provided for in the following section, and leave such envelope unsealed. He shall then put the return envelope inside of another mailing envelope, addressed to the voter, and seal same. The chairman shall also enclose with the absentee ballot a printed sheet of instructions to the voter on how voter is to vote the ballots and return them to the county board. Except where previously delivered to and

voted by the absentee voter, all such absentee ballots shall be mailed promptly to each applicant by the chairman after approval of same by the board. All postage needed for the mailing of all absentee ballots to the voter shall be supplied by the board. All return postage shall be supplied by the voter. (1939, c. 159, s. 3; 1963, c. 457, s. 3.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1963 amendment rewrote this section.

Delivery of Ballot to Voter.—The fact that the chairman of the county board of elections, in company with candidates in the election, personally delivers absentee ballots to absentee voters at their temporary residence in another state or county is insufficient, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud, or imposition. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-57. Container envelopes provided for absentee ballots; affidavit of absent voter.—It shall be the duty of the said chairman of the county board of elections to fold the ballots, enclose them in the container return envelope furnished by him, which envelope shall bear on one side thereof, written by said chairman, the name of the voter, the number of the application, and the precinct in which the ballot is to be voted, and on the other side thereof the return address of the chairman together with a printed affidavit as follows:

Affidavit of Absentee or Sick Voter

State of .... County of .... I, ..., do solemnly swear that I am a resident and qualified voter in .... precinct, ... County, North Carolina; that I will be absent from my county on the day of the general election on November ....; (or that due to illness or physical disability I will be unable to travel to the voting place on election day). I further swear that I made application for this absentee ballot, and that I marked the ballots enclosed herein, or the same were marked for me in my presence and according to my instructions.

....
Signature of voter.

Sworn to and subscribed before me this .... day of ...., 19..
(Seal)

....
Signature and title of Officer.

(Acknowledgment of servicemen may be taken before any commissioned officer.) (1939, c. 159, s. 4; 1943, c. 751, s. 2; 1963, c. 457, s. 4.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Cross Reference.—See notes to §§ 163-54, 163-56, 163-58.

Editor's Note.—The 1943 amendment rewrote this section.

The 1963 amendment struck out "or same was made for me by some member of my immediate family," following the word "ballot" in the second sentence of the affidavit. The amendatory act provides that "the provisions of G. S. 163-58, permitting the absentee voter to mark the ballots or cause the same to be marked in his presence and according to his instructions, are in no sense abrogated, but are specifically approved and confirmed."

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-58. Instructions for voting absentee ballots.—In using such ballot the absent voter shall make and subscribe to the appropriate affidavit prescribed in § 163-57, before an officer authorized by law to administer oaths, having an official seal, which seal shall be affixed, and in the presence of such officer, mark the ballot, or ballots, or cause the same to be marked in his presence according to his instructions, and the ballot, or ballots, shall then in the presence of the officer be folded by the voter or attendant, so that each ballot will be separate and then in the presence of such officer be placed in the container envelope, and the container envelope securely sealed. The container envelope, with the ballot enclosed, shall be placed in the return envelope and shall be mailed by the voter to the chairman of the county board of elections issuing the ballot. Provided, that in the case of voters who are members of the armed or auxiliary forces of the United States, the signature of any commissioned or noncommissioned officer of the rank of sergeant in the army, or chief petty officer in the navy, or the equivalent thereof, as a witness to the execution of any certificate required by this or any other section of this article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with the absentee ballots. (1939, c. 159, s. 5; 1941, c. 248; 1943, c. 736; 1945, c. 758, s. 5; 1963, c. 457, s. 5.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Cross Reference.—See Editor's Note to § 163-57.

Editor's Note.—The 1941 amendment added the proviso at the end of this section. The 1943 amendment rewrote the second sentence and inserted the third sentence, and the 1945 amendment rewrote the proviso.

The 1963 amendment struck out "and shall sign or cause to be signed on the back or margin of said ballot, or ballots, his or her name" immediately following the word "instructions" near the middle of the first sentence. It also struck out "if the voter is absent from the county" at the end of the second sentence and eliminated provision requiring delivery of the ballot before 3:00 p.m. on the day of the election where the voter was within the county at the time of signing the affidavit and marking the ballot.

Delivery of Ballots.—The fact that the chairman of a county board of elections delivers absentee ballots in person to the voters at their temporary residences outside the boundaries of the State, and that the voters deliver the votes in the sealed containers to him in person instead of mailing them, is not sufficient, standing alone, to vitiate the votes. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Voters Must Be Sworn.—Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Oaths Need Not Be Taken upon the Bible.—The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

The interest of the clerk of the superior court in his own re-election, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-59. List of applications made in triplicate; certificate of correctness.—On the morning of the day before any general election, the chairman of the county board of elections shall make a list, in triplicate, of all applications received by him from voters to whom he has issued absent voters' ballots, and mail said list, with the original of all applications received by him, by registered mail, to the chairman of the State Board of Elections, at Raleigh, North Carolina, and post one copy thereof at a conspicuous place at the courthouse door; reserving for himself the duplicate of said list. On said list he shall make, under oath, a certificate as follows:

I, ..., chairman of the county board of elections of .... County, do hereby certify that the foregoing is a list of all applications filed with me for absent voters' ballots to be voted in the election, on the .... day of ...., 19....; and I further certify that I have issued ballots to no other persons than those listed therein, whose original applications are enclosed and filed herewith; and I further certify that I did not deliver any of the ballots to any other person than to the elector by mail addressed to the voter.

(Signed) ....
Chairman .... County
Board of Elections

Dated ....

Sworn to and subscribed before me this ...... day of ......, 19.....
Witness my hand and official seal ....
Title of Officer

(1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1943 amendment struck out "on blanks furnished by the State Board of Elections for that purpose" formerly appearing after the word "triplicate" near the beginning of this section.

The 1963 amendment struck out "personally, or a member of his, or her, immediate family, or" following the word "elector" near the end of the certificate.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-60. Absentee ballots with list of same for each precinct delivered to registrars on election morning; copy mailed to State Board of Elections.—On the morning of the day of a general election the chairman of the county board of elections shall deliver, or cause to be delivered, to each registrar in the county two copies of a list of all of the absentee ballots received by him from absent voters for such precinct, and at the same time there shall be delivered to the registrars all of the absentee container-return envelopes unopened for such precinct which the chairman has received back from the voters. The registrar shall post one copy of said list of absentee voters in a public place at the polls by noon on election day. The registrar shall retain the other copy of said list until all challenges of absentee ballots have been heard. On election day the chairman of the county board of elections shall mail or cause to be mailed to the State Board of Elections one copy of the list of absentee ballots received by him. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1943 amendment rewrote this section.

The 1963 amendment inserted "two copies of" near the middle of the first sentence. It also rewrote the second sentence and added the third and fourth sentences.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ 163-61. Ballots deemed voted upon delivery to precinct officials; opening, depositing and recording; rejected ballots; challenges.—Absent voters' ballots shall be deemed to be voted when delivered to the precinct officials unless it shall appear that the affidavit and jurat, or neither, are not in due form, in which event, the ballot shall not be voted, nor counted. Immediately upon the closing of the polls for the voting of voters in person, the recording of the absent voters' names on the poll book and depositing the ballot in the ballot box shall be begun and the procedure shall be as follows:

(1) The name of the voter as it appears on the affidavit on the envelope shall be called by one of the judges of elections. If it be found that he is a registered and qualified voter of the precinct, and no challenge is offered to the vote, the name shall then be recorded in the poll book with the notation "Absent Voter." A judge of elections shall then open the envelope by slitting it with a sharp instrument in such manner as not to destroy, tear or obliterate any part of the affidavit. The ballot shall then be removed from the envelope without unfolding the same so as to disclose how the ballot is marked, and such ballot, without examination as to how it is marked, shall be deposited in the appropriate ballot box as other ballots are deposited; provided, however, that if the affidavit and jurat are not in due form, or the voter did not sign his name on the affidavit on the envelope, or the officer's seal is not affixed, said ballot shall not be deposited in the ballot box, nor counted, but returned to its envelope and marked "Rejected."

(2) If an absent voter's ballot is challenged and the challenge is sustained, the ballot shall be returned to its envelope and marked "Challenge Sustained" and returned as provided for the return of rejected ballots.

All envelopes shall be carefully preserved and, with the ballots marked "Rejected" and "Challenge Sustained," shall be filed with the chairman of the county board of elections at the time the returns from said precinct are filed, and shall be preserved intact by the chairman for a period of six (6) months, or longer if any contests shall then be pending concerning the validity of any of the absentee ballots so delivered to him. (1939, c. 159, s. 8; 1963, c. 547, s. 8.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1963 amendment rewrote the opening paragraph and subdivision (1). It also deleted "of the county board of elections" following the word "chairman" near the middle of the last paragraph.

Applied in State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

§ **163-62. Procedure for challenging absentee ballots on election day; appeals to county board.**—Any elector may challenge an absent voter's ballot on election day. Any challenge to any absentee ballot must be made in writing to the precinct registrar by the person making the challenge, and such challenger shall set out, in writing, the specific reasons given for each absentee ballot challenged, and so specify why the absentee ballot challenged fails to be in compliance with the law relating thereto, or why such absent voter is not legally entitled to vote in that election. Each absent voter's ballot must be challenged separately with the reason stated in writing in each case. Upon such challenge being filed in accordance with the provisions herein set forth, then it shall be the duty of the registrar and judges to proceed to hear the challenger's reasons for each such a challenge made and decide same. The burden of proof shall be upon the challenger in each case on election day to sustain each challenge so made.

Any absent voter whose absentee ballot has been challenged, and the challenge sustained, may, either personally or through a duly authorized representative, appeal to the county board of elections on canvass day to sustain the validity of the voter's ballot, and if its validity is sustained his or her absentee ballot shall be counted and added by the board to the returns from the proper precinct. (1939, c. 159, s. 9; 1945, c. 758, s. 8; 1953, c. 1114.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1945 amendment added a proviso as to a voter absent from county or physically unable to attend.

The 1953 amendment rewrote this section, adding the provisions as to procedure for challenging absentee ballots.

§ **163-63. Register of applications declared a public record.**—The register of applications for absent voters ballots, required to be kept by the chairman of the county board of elections, shall constitute a public record and shall be opened to the inspection of any elector of the county, at any time within thirty days before and thirty days after any general election, or at any other time when good and sufficient reason may be assigned for such inspection. (1939, c. 159, s. 10.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

§ **163-64. Absentee voting where voting machines are used.**—In all counties and precincts in which voting machines are used, all of the provisions of this article relating to absentee voting shall apply. Paper ballots shall be printed for use in absentee voting in such counties and used in the same manner as counties not using voting machines, except after the absentee ballots are counted in each precinct upon the closing of the polls, the absentee vote shall be added to the totals for each candidate or proposition as shown on the voting machines, and the combined total entered on the official precinct returns for the precinct. The absentee ballots and envelopes shall be returned by the registrars to the county board of elections on canvass day. (1963, c. 457, s. 9.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—Session Laws 1963, c. 457, s. 9, repealed former § 163-64, making it a misdemeanor to certify an absentee voter's affidavit without administering the oath to such voter, and substituted the above section therefor.

§ **163-65. False statements under oath made misdemeanor.**—If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement, under oath, is required to be made by the provisions of this article, such person shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars ($100.00), or imprisoned for not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 12.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

§ **163-66. False statements not under oath made misdemeanor.**—If any person, for the purpose of obtaining or voting any official ballot hereunder, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, such person shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 13.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

§ **163-67. Custody of applications, ballots, etc.**—The chairman of the county board of elections in each county shall be the sole custodian of blank applications for absent voters' ballots, the official ballots, blank certificates and envelopes, and he shall issue same only in strict accordance with the provisions of this article. The issuance of such absent voters' ballots is the responsibility and duty of the chairman of the county board of elections. Blank applications for absent voters' ballots may be delivered to any elector applying for same for his or her own personal use, and not for the use of others. He shall keep all records and make all reports, promptly, required by him by the terms of this article.

The willful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than sixty days, or both, in the discretion of the court. (1939, c. 159, s. 14; 1963, c. 457, s. 10.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

Editor's Note.—The 1963 amendment added to the third sentence "for his or her own personal use, and not for the use of others."

§ **163-68. Violations not otherwise provided for made misdemeanor.**—If any person shall willfully violate any of the provisions of this article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, such person shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1939, c. 159, s. 15.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

§ **163-69. Reports of violations to Attorney General and solicitor.**—It shall be the duty of the State Board of Elections to report to the Attorney General of North Carolina, and to the solicitor of the appropriate judicial district, any violation of this article, or the failure of any person charged with a duty hereunder to comply with and perform such duty, and it shall be the duty of the solicitor to cause such person to be prosecuted therefor. (1939, c. 159, s. 16.)

Local Modification.—Sampson: 1941, c. 167; 1963, c. 882.

§ **163-69.1. Articles 11 and 11A, relating to voting by servicemen, not applicable.**—Except as therein otherwise provided, articles 11 and 11A of chapter 163 of the General Statutes of North Carolina relating to absentee registration and voting by servicemen shall not be applicable to the provisions of this article. (1963, c. 457, s. 11.)

Local Modification.—Sampson: 1963, c. 882.

ARTICLE 11.

Absentee Voting in Primaries by Voters in Military and Naval Service.

§ **163-70. Voting by persons in armed forces.**—Any qualified voter entitled to vote in the primary of any political party, who, on the date of such primary, is in the military, naval or other armed forces of the United States may vote in the primary of the party of his affiliation in the manner as hereinafter provided. (1941, c. 346, ss. 1, 1a; 1945, c. 758, s. 4.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 480.

The 1945 amendment struck out the former provision that the act shall be null and void on or after the repeal of the Selective Service Act.

§ 163-71. Application for ballot; blanks furnished; name of applicant and other information entered on register.—Such voter at any time before the date of the primary may make an application in writing duly signed by him to the chairman of the county board of elections of his county for an official primary ballot of the party of his affiliation as shown by the party primary registration books.

Said application shall show the precinct in which the applicant is registered and entitled to vote and the company or other armed unit of which he is a member.

The county board of elections shall furnish appropriate application blanks to any such voter on request. The application, however, shall not be required to be on such form but may be informally made in writing signed by the voter.

Upon the receipt of such application the chairman of the county board of elections of the county of the voter's residence shall enter on a register kept for that purpose the name of the applicant, his party affiliation and the precinct in which applicant is entitled to vote as shown by the application. (1941, s. 346, ss. 2, 3; 1963, c. 457, s. 12.)

Editor's Note.—The 1963 amendment deleted from the first and third paragraphs provisions relating to the signing of the voter's name by a member of his immediate family.

§ 163-72. How ballot mailed to applicant.—The chairman of the county board of elections shall register said application in the chairman's Absentee Register of Absentee Military Applications, and if the application is in proper form the said chairman shall then write or type on the top of each kind of primary ballot being used in such primary election the words "Absentee Ballot No. ....", filling in the proper number of the application, and enclose said ballots in a container-return envelope, together with a sheet of instructions to voter, unsealed, and then place the said envelope in another mailing envelope and mail same direct to the applicant voter to the same address furnished by the absent voter. (1941, c. 346, ss. 4, 5; 1963, c. 457, s. 13.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 163-73. Envelope for return of ballot; form of certificate on envelope.—The return envelope which the chairman shall send to the serviceman who applied for a primary absentee ballot to vote in the next State-wide primary election shall bear on one side thereof, written by said chairman, the name of the voter, the number of the application, and the precinct in which the ballot is to be voted, and on the other side on the face of the envelope the return address of the chairman, together with a printed certificate as follows:

PRIMARY ELECTION

Certificate of Serviceman

I, ..., a duly qualified Democrat—Republican (Strike out whichever is inappropriate) voter in .... precinct, ... County, do hereby certify that I am a qualified voter of said precinct; that I am in the Armed Forces of the United States, a member of .... Company or Unit, and I am mailing this ballot duly marked by me to the chairman of the county board of elections of the county of my residence to be voted in the forthcoming primary of said party.

Witness my hand in the presence of .... officer this the .... day of ...., 19.....

....
(Signature of voter)

Witness: ....
(Signature of officer)

....
(Title and unit of officer)

Note: May be witnessed by any commissioned or noncommissioned officer of the rank of sergeant in the Army, or petty officer in the Navy, or the equivalent thereof. (1941, c. 346, s. 6; 1963, c. 457, s. 14.)

Editor's Note.—The 1963 amendment rewrote this section.

§ **163-74. Voting of ballot; mailing and delivery to proper precinct; application of article 10 as to depositing, voting, counting, certifying, etc.**—Upon the receipt of his absentee ballot by mail from the chairman the voter shall vote same by properly marking the ballot in the presence of any commissioned or noncommissioned officer of the rank of sergeant in the Army, or petty officer in the Navy, or the equivalent thereof. The voter shall then enclose the ballot in the container-return envelope, seal the envelope, and sign his name on the certificate printed on the face of the envelope in the presence of the subscribing officer, which officer shall also sign as a witness in the place provided therefor at the bottom of the certificate on the envelope. The voter shall then mail the said container-return envelope to the chairman of the county board of elections. The chairman of the county board of elections on the day of the primary election shall deliver all such primary absentee ballot envelopes received by him unopened to the registrar of the proper precincts. Except as is herein provided, the provisions of article 10 shall apply as to the manner of depositing and voting of such primary absentee ballots, the counting and certifying the results, etc. (1941, c. 346, ss. 7-10; 1963, c. 457, s. 15.)

Editor's Note.—The 1963 amendment rewrote this section.

§ **163-75. Preservation of envelopes in which ballots transmitted.**—The precinct officials with the returns of the primary shall deliver to the chairman of the county board of elections all envelopes from which absentee ballots have been voted and said envelopes with all applications received by the chairman of the county board of elections on which he has issued ballots shall be preserved for at least six months after the primary and longer if there should be reason or necessity therefor. (1941, c. 346, s. 11.)

§ **163-76. Register of ballots a public record; posting list.**—The register of the ballots issued by the chairman shall be a public record open to inspection by any voter of the county at any time.

A list of all ballots received at a precinct to be voted therein shall be posted at a conspicuous place about the polls as soon as practical after receipt of the ballots and before they are voted. (1941, c. 346, ss. 12, 13.)

§ **163-77. Unlawful voting made misdemeanor.**—Any person who shall vote or attempt to vote absentee ballot in any primary, not then being a member of the armed forces of the United States, shall be guilty of a misdemeanor and punished by fine of not more than two hundred dollars ($200.00) or imprisoned for not more than six months or both in the discretion of the court. (1941, c. 346, s. 14.)

ARTICLE 11A.

Absentee Registration and Voting in General Elections by Persons in Military or Naval Service.

§ **163-77.1. Persons in armed forces, their wives, veterans, service civilians and members of Peace Corps may register and vote by mail.**—Every individual absent from the county of his residence and serving in the land or naval forces of the United States, including the members of the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, and the Women's Army Auxiliary Corps and Merchant Marine, who is eligible to register for and is qualified to vote at any election held under the laws of this State, shall be entitled to register and vote in the manner hereinafter provided.

All of the provisions of this section and of this article shall apply equally to the wife of a serviceman residing with her husband outside of the county of her husband's residence; to a discharged, disabled war veteran in a government hospital; and to a civilian attached to and serving outside of the United States with the armed forces and members of the United States Peace Corps, thus permitting such persons, when qualified to register and vote under the laws of this State, to register by mail and vote absentee ballots in all State-wide primaries and elections held in North Carolina. (1943, c. 503, s. 1; 1953, c. 908; 1963, c. 457, s. 16.)

Editor's Note.—The 1953 amendment added the second paragraph.

The 1963 amendment inserted in the second paragraph the reference to the United States Peace Corps.

§ 163-77.2. Application made to Secretary of State; transmitted to chairman of county election board.—Such absent member of the United States armed forces, absent from his residence county, may make an application, in writing, at any time prior to an election on the form prescribed in Public Law seven hundred and twelve of the Seventy-seventh Congress, to the Secretary of State, for absentee ballots to be voted in the election, and the Secretary of State shall, after making a record of the name and residence of such applicant, transmit such application to the office of the State Board of Elections. The State Board of Elections shall, after the receipt of such application from the Secretary of State, transmit said application to the chairman of the county board of elections of the county in which applicant resides, with all necessary instructions to said county chairman as to his duties hereunder. (1943, c. 503, s. 2.)

§ 163-77.3. Duties of county chairman upon receipt of application; registration and issuance of absentee ballots.—It shall be the duty of the chairman of the county board of elections upon receipt of said application from the State Board of Elections to:

(1) If the applicant is found by the chairman of the county board of elections to be registered in the registration book of the precinct in which applicant advises he is residing, the said chairman shall mail such applicant one official absentee ballot of each kind being used in the election, together with a container-return envelope for the return of the ballot the same as required by § 163-57.

(2) If the applicant is found by the chairman not to be registered in the registration book of the voting precinct in which the applicant declares he is residing, upon the chairman determining the resident precinct of such applicant and that he is eligible under article six of the State Constitution and the statutory laws relating thereto to be registered, then the said chairman may register such applicant in the registration book furnished and kept by him under the provisions of § 163-56 according to precincts.

When the chairman of the county board of elections has registered said applicant in said registration book, he shall thereupon mail to the applicant one official absentee ballot of each kind being used in the election, including candidates for all federal, State, district, county and local offices and for Constitutional amendments, together with a container-return envelope for the return of the ballots to the chairman the same as required by § 163-57. (1943, c. 503, s. 3.)

§ 163-77.4. Chairman to prepare list of persons registered; list to be posted at precinct.—The chairman of the county board of elections shall prepare in duplicate a list of the names of all persons who have applied for absentee ballots under the said federal act and whose names he has registered on said absentee registration book. One copy of this list shall be delivered by said chairman, together with a copy of the list of names of all other absentee ballots which he is required by § 163-60 to deliver, to the registrar of each precinct on the morning of the election, which shall be posted by the registrar in a public place at the voting precinct where it may be inspected by any voter. This list shall be entitled "List of applicants under the federal act of absentee ballots registered by chairman of the county board of elections." One copy shall be kept by such chairman. (1943, c. 503, s. 4.)

§ **163-77.5. List constitutes valid registration; names not to be placed on regular registration books.**—The chairman of the county board of elections' list as delivered to the registrars of the various precincts shall constitute the only precinct registration of the members of the armed forces registering under the provisions of this article, and the posting of such list by the registrar at the precinct shall be sufficient to validate the ballots of such absentee voters when such ballots are in all other respects regular, and the registrars shall not register on the regular election registration books of the precincts the names of such voters registered under the provisions of this article. (1943, c. 503, s. 5.)

§ **163-77.6. Chairman may register qualified persons who apply by mail direct to him for an absentee ballot.**—If an unregistered applicant for an absentee ballot in the said armed forces applies in writing direct to the chairman of the county board of elections instead of through the Secretary of State, the said chairman may likewise register said applicant in his registration book and mail him the absentee ballot if the chairman determines that said applicant is qualified to register under article six of the State Constitution and the statutory laws enacted relating thereto and shows that he or she is a member of the United States armed forces as above described in § 163-77.1. (1943, c. 503, s. 6.)

§ **163-77.7. Article 10 on absentee voting applicable except as otherwise provided herein.**—Except as herein otherwise provided, the provisions of article 10 of this chapter, relating to absentee voting in general elections, shall apply as to the form of the absentee ballot, the certificates, envelopes, and manner of depositing and voting of such ballots, counting of ballots and certifying results, et cetera. (1943, c. 503, s. 7.)

§ **163-77.8. State Election Board to supervise administration of article; power to make regulations.**—The State Board of Elections is hereby given full power and authority to supervise the administration of this article, and in case sufficient provisions may not appear to have been made herein, said Board of Elections may make such reasonable rules and regulations as are necessary to carry out the true intent and purpose of this article, not in conflict with the provisions of the law relating thereto. (1943, c. 503, s. 8.)

§ **163-77.9. Provisions applicable to absentee registration and voting in primaries.**—The provisions of this article shall be applicable to registration and voting in primary elections, as well as in general elections. The State Board of Elections is hereby authorized and empowered to adopt and promulgate whatever rules and regulations it may deem necessary to conform the provisions hereof to the primary election law. (1943, c. 503, s. 9; 1945, c. 758, s. 6.)

Editor's Note.—The 1945 amendment rewrote this section.

§ **163-77.10. Printing and distribution of absentee ballots and supplies.**—In order to fully carry out the purposes and intentions of this article, the State Board of Elections and the various county boards of elections, as the case may be, are authorized, empowered and directed to have printed, and in the hands of the proper election officials, all necessary ballots, together with the container-return envelope, not later than the first day of September immediately preceding the ensuing general election, and in the event this article is made applicable to primary elections, not later than ten days after the time has expired for the filing for candidacy by county officers. (1943, c. 503, s. 10; 1949, c. 672, s. 3.)

Editor's Note.—The 1949 amendment substituted "September" for "August."

§ **163-77.11. Expenses of administering article; how paid.**—The expenses of administering the provisions of this article by the State Board of Elections shall be paid for by allotment from the State contingency and emergency fund, unless or until the same is paid by the federal treasury under the provisions of the said federal act. (1943, c. 503, s. 11.)

§ **163-77.12. Article inapplicable to persons after discharge from service; re-registration required.**—Upon any member of the armed forces, as hereinbefore defined, being discharged therefrom, he or she shall no longer be entitled to the benefits of the provisions of this article, and if such person registered under the provisions of this article, he or she shall be required to re-register in person the same as any other person before being entitled to vote in any election. (1943, c. 503, s. 12.)

Article 12.

Challenges.

§ **163-78. Registrar to attend polling place for challenges.**—It shall be the duty of the registrar to attend the polling place of his township or precinct with the registration books on Saturday preceding the election, from the hour of nine o'clock a. m. till the hour of three o'clock p. m., when and where the said books shall be open for the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection, the registrar shall enter upon his books, opposite the name of the person so objected to, the word "Challenged," and shall appoint a time and place, before the election day, when he, together with the judges of election, shall hear and decide said objection, giving personal notice of such challenge to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence: Provided, nothing in this section shall prohibit any elector from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so challenged or objected to shall be found not duly qualified, the registrar shall erase his name from the books. (1901, c. 89, s. 19; Rev., s. 4339; C. S., s. 5972.)

Absence of Officer in Charge for a Short Time.—That one of the officers appointed to conduct an election was absent a short time from the polls, during which time no vote was cast and the ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, does not vitiate the election. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Remedy for Irregular Registration.—Where it is alleged that the registration of voters in a primary municipal election was irregular and fraudulent, and the plaintiffs seek mandamus to compel a proper registration, and the statute and the charter of the city under which the election is to be held provided for challenge to voters so registered, mandamus being a proceeding in equity will not be issued, there being an adequate remedy at law by way of challenge provided by statute. Glenn v. Culbreth, 197 N. C. 675, 152 S. E. 332 (1929).

Cited in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ **163-79. How challenges heard.**—When any person is challenged, the judges and registrar shall explain to him the qualifications of an elector, and shall examine him as to his qualifications; and if the person insists that he is qualified and shall prove his identity with the person in whose name he offers to vote, and his continued residence in the precinct since his name was placed upon the registration list, as the case may be, by the testimony, under oath, of at least one elector, one of the judges or the registrar shall tender to him the following oath or affirmation:

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years old, and that you have resided in this State for one year, and in this precinct (ward or township) for thirty days next preceding this election, and that you are not disqualified from voting by the Constitution and laws of this State; that your name is (here insert name given), and that in such name you were duly registered as a voter of this township; and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any other polling place. So help you, God.

And if he refuses to take such oath, when tendered, his vote shall be rejected; if, however, he does take the oath when tendered, his vote shall be received: Provided, that after such oath or affirmation shall have been taken, the registrar and judges may, nevertheless, refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualification of a person offering to vote. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in this section, the registrar or one of the judges shall write on the poll books, at the end of such person's name, the word "Sworn." The same powers as to the administration of oaths and affirmations and the examination of witnesses, as in this section granted to registrars and judges of election, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973; 1955, c. 871, s. 2.)

Editor's Note.—The 1955 amendment inserted "thirty days" in lieu of "four months" formerly appearing in the oath of the challenged elector.

§ **163-79.1. Registration records open to public in counties having loose-leaf and visible registration system and permanent registration; challenges in such counties.**—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the registration books or permanent records of registration shall be open to public inspection by any elector of the county between such reasonable hours and on such day or days of each week as the county board of elections shall find reasonable, at which time the registration of any elector shall be subject to objection and challenge. Except as hereinafter provided, G. S. 163-78 and 163-79 shall not apply to such counties. All challenges shall be made to and heard solely by the county boards of elections in the same manner as that provided in G. S. 163-79 for the hearing of challenges by precinct election officials. Nothing herein shall be taken to prohibit any elector from challenging or objecting to the name of any other elector offering to vote on the day of any primary or general election, and, in the event of such challenge, the same shall be heard and determined by the registrar and judges of election in the manner provided by G. S. 163-79. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ **163-80. Challenge as felon; answer not used on prosecution.**—If any person is challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution. (1901, c. 89, s. 71; Rev., s. 3388; C. S., s. 5974.)

ARTICLE 13.

Conduct of Elections.

§ **163-81. Special elections.**—Every election held in pursuance of a writ from the Governor shall be conducted in like manner as the regular biennial elections, so far as the particular case can be governed by general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers holding and the persons elected to the same penalties and liabilities as if the same had been held at the time and according to the rules and regulations prescribed for the regular biennial elections. (1901, c. 89, s. 75; Rev., s. 4341; C. S., s. 5975.)

Cited in Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

§ **163-82. Power of election officers to maintain order.**—The registrar and judges of election in each ward or precinct, the board of elections of each county, and the State Board of Elections shall respectively possess full power and authority to maintain order, and to enforce obedience to their lawful commands during their sessions, respectively, and shall be constituted inferior courts for that purpose, and if any person shall refuse to obey the lawful commands of any such registrar or judges of election, county boards of elections, or the State Board of Elections, or by disorderly conduct in their hearing or presence shall interrupt or disturb their proceedings, they may, by an order in writing, signed by their chairman, and attested by their clerk, commit the person so offending to the common jail of the county for a period not exceeding thirty days, and such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by such State or county boards of elections in writing, and the keeper of such jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment. Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4.)

Editor's Note.—The 1955 amendment added the proviso.

§ **163-83. Voter may deposit his own ballot.**—The ballot may be deposited for the voter by the registrar, or one of the judges of election, or the voter may deposit it if he chooses. (1901, c. 89, s. 24; Rev., s. 4343; C. S., s. 5979.)

Choice as to Voting.—The provisions of our State Constitution, Art. VI, § 6, making the distinction that the elector shall vote by ballot, and an election by the General Assembly shall be viva voce, gives under our statute, the elector the choice to deposit his own ballot secretly, or to declare his choice openly when depositing it, or to have the registrar, or one of the judges of election, deposit it for him. Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346 (1920).

ARTICLE 14.

Counting of Ballots; Precinct Returns; Canvass of Votes and Preparation of Abstracts; Certification of Results by County Board of Elections.

§ **163-84. Proceedings when polls close; counting of ballots; report of vote to county board of elections.**—At the time for closing the polls the registrar shall announce that the polls are closed, but any qualified electors who are in the process of voting, or are in line within the voting enclosure waiting to vote, shall be allowed to vote before the polls close.

The county board of elections of any county may, by a majority vote, authorize the use of precinct ballot counters to aid the registrars and judges of election in the counting of the ballots in any precinct or precincts within the county and such ballot counters, to the extent of the number designated by the county board of elections, may be selected by the county board of elections or the registrars as the county board may direct. Upon acceptance of the appointment as ballot counters, such persons shall appear before the registrar at the polling place immediately at the close of the polls and take an oath administered by the registrar to support the

Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and that they will honestly discharge the duties of ballot counter and will fairly and honestly tabulate the votes as cast in said primary or election. In a general election one ballot box may be emptied at a time upon a table and all those ballots marked as a straight party vote for all of the candidates of one party may be put into one pile and each such ballot counted as one vote for each candidate on said ballot of such party as marked in the party circle above, and shall be so tallied on the tally sheet. All split-voted ballots—that is for candidates of more than one party—shall be called out and tallied according to the manner in which they are marked for the individual candidates. All questions arising upon the counting of the votes or the tabulation thereof as to how a ballot shall be counted shall be referred to the registrar and judges of election for determination before the completion of the counting of a box. More than one box may be counted at a time by the precinct officials, clerks, and ballot counters, but the registrar and judges of election shall have supervision over the counting of all boxes and be responsible for them. Before any primary or election the chairman of the county board of elections shall furnish to each registrar written instructions on how ballots shall be marked and counted under the provisions of the law. Before the counting of the ballots begins the registrar shall properly instruct all of the ballot counters, clerks and judges on how differently marked ballots shall be counted and tallied. The counting of the ballots in each box shall be made in the presence of the election officials, witnesses and watchers who are present and who may desire to watch same. Provided, that in all primary elections, when the counting of the ballots begins after the polls close, one ballot shall be taken at a time from the ballot box by one of the election officials named herein and opened in full view of all of the election officials and witnesses present, and the name of each candidate voted for shall be read aloud distinctly. The vote received by each candidate shall be tallied on the tally sheet. This same procedure for counting the ballots shall apply to all the ballot boxes being counted at the same time in a primary election.

No ballot shall be counted which is marked contrary to law, except that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice.

The counting of ballots shall be continuous until completed. From the time the ballot box is opened and the count of votes begun, until the votes are counted and returns are made out, signed and certified as herein required, and given to the presiding judge or registrar for delivery to the county board as required herein, the registrar and judges of election in each precinct shall not separate, nor shall a registrar or judge leave the polling place except from unavoidable necessity. In case of illness or unavoidable necessity, the board of elections may substitute another qualified person for any precinct official so incapacitated.

Immediately following the completion of the counting of the votes on election night and the certification of the official precinct returns, the registrar, or one of the judges selected by him, shall report the total precinct vote for such candidate or proposition by telephone or otherwise to the office of the county board of elections, which report shall be unofficial and shall have no binding effect upon the official county canvass to follow thereafter. The chairman or secretary or clerk to the county board of elections shall, as soon as such reports are received from the registrars, publish such reports to the press and to the radio and television. The cost thereof shall be charged to the operating expense of the county board of elections. (1933, c. 165, s. 8; 1955, c. 891; 1961, c. 487.)

Editor's Note.—The 1955 amendment struck out the former second sentence of the first paragraph, and substituted a new paragraph for the former second paragraph.

The 1961 amendment added the last paragraph.

The following cases were decided under former § 5983 of the Consolidated Statutes, now repealed, which provided for the counting of ballots. These cases seem applicable to the present law as the provisions of former § 5983 are substantially set forth in the instant section.

Counting by Others than Officers of Election.—While it is irregular to permit other persons than the officers of election to count the ballots, yet, unless it appears affirmatively that the count was not correct, that fact will not be allowed to vitiate the election, especially when the judges accepted and certified the result thus ascertained as true. State v. Calvert, 98 N. C. 580, 4 S. E. 127 (1887).

Effect of Voting for Too Many Candidates.—The statute does not contemplate throwing out the whole ballot for voting one ticket for too many candidates, its language distinguishing between the ballot and the ticket, of several of which (each office voted for being a separate ticket on the same ballot) the ballot is made up. Hence a ballot for one claiming the office of register of deeds, thrown out because containing two unmarked names, instead of one, for the office of recorder of the county, was improperly rejected as a vote for register, the elector's choice for such office being properly indicated. Bray v. Baxter, 171 N. C. 6, 86 S. E. 163 (1915).

A ballot the only defect of which was that it contained unmarked names of four persons for the office of county commissioner, while only three commissioners were to be elected, was improperly rejected. Bray v. Baxter, 171 N. C. 6, 86 S. E. 163 (1915).

Two Candidates with Same Name—Evidence of Identification.—If there be two candidates for different offices having the same name, and a ticket be found in the ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given. Wilson v. Peterson, 69 N. C. 113 (1873).

Cited in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960); Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

§ 163-84.1. Precinct ballot counters in counties having loose-leaf and visible registration system and permanent registration; counting and tabulation of returns in such counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections may by a majority vote authorize the use of precinct ballot counters to aid the registrars and judges of elections and thereupon the county board of elections, or the registrars, to the extent of the number of ballot counters designated by the county board of elections, may select ballot counters to aid the registrars and judges of elections in counting the ballots and making precinct returns. The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the registrars, shall be reported by the registrars to the county board of elections at the county canvass following the election. Upon acceptance of appointment as ballot counter, such person shall appear before the registrar at the polling place upon the closing of the polls and take oath that such person will support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and will honestly and impartially discharge the duties of a ballot counter and will honestly and fairly tabulate and make return of the count and will not keep or make any memorandum of such count, except that which he is called upon to make to the county board of elections, and will not make any statement with reference to said count and return, unless called upon to testify in a judicial proceeding for a violation of the election laws of this State. The registrars, judges of election, clerks, and ballot counters, shall, upon the closing of the polls, proceed to open the ballot boxes and to count and tabulate the returns by teams in such manner as may be prescribed by the county board of elections. All questions or challenges arising upon the count and tabulation or with reference to any ballot or ballots cast at said election shall be heard and determined by the registrars and judges of election in the manner provided by law. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-84.2. Preservation of ballots; locking and sealing of ballot boxes; signing of certificates.—After the counting is completed on the night of any primary or election, all ballots voted shall be put back in the proper ballot boxes from which they were taken, and the registrar and judges shall promptly securely lock each ballot box, and securely place a seal around the top of the boxes so that no ballot can be taken from or put in any of the boxes, and the registrar and judges shall sign the seal on each box. These ballot boxes shall remain in the safe custody of the registrar subject to any orders from the chairman of the county board of elections as to their disposition. It shall be the duty of the chairman of the county board of elections to furnish to each registrar all locks and proper seals for all ballot boxes, with proper instructions as to how each box is to be securely locked and sealed in compliance with this section. There shall be printed on each precinct return form to be signed by the registrar and judges after the count is completed a certificate certifying that each ballot box was properly locked, sealed and signed by the registrar and judges, as herein prescribed, before they left the polling place on primary or election night. Willful failure to securely lock, seal and sign the seal on each ballot box on the night of any primary or election, and willful failure to sign the certificate on the duplicate return forms certifying that this has been done shall constitute a misdemeanor. (1959, c. 1203, s. 2.)

§ **163-85. How precinct returns are to be made and canvassed.**—When the results of the counting of the ballots have been ascertained, such results shall be embodied in a duplicate statement to be prepared by the registrar and judges on forms provided by the county board of elections and certified to by said officers. One of the statements of the voting in the precinct shall be placed in a sealed envelope and delivered to the registrar or judge selected by them for the purpose of delivery to the county board of elections, at its meeting to be held on the second day after the election or primary. The other duplicate statement shall be mailed by one of the other precinct election officers to the chairman of the county board of elections immediately.

The county board of elections shall meet on the second day next after every primary or election, at eleven o'clock A. M. of that day, at the courthouse of the county, for the purpose of canvassing the votes cast in the county and the preparation of the county abstracts. Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver those returns at the meeting of the county board of elections by twelve o'clock A. M. on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. In the event any precinct returns have not been received by the county board by twelve o'clock A. M. on the first day of its meeting, or if any returns are incomplete or defective, it shall have authority to dispatch an officer to the residence of such precinct officials for the purpose of securing the proper returns for such precinct. (1933, c. 165, s. 8.)

Editor's Note.—This section and § 163-86 were rewritten by the 1933 amendment by abolishing the county board of canvassers and assigning their duties to the county board of elections. See 11 N. C. Law Rev. 228.

Returns Admissible as Substantive Evidence.—See State v. Ponder, 234 N. C. 294, 67 S. E. (2d) 292 (1951).

Cited in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ **163-86. County board of elections to canvass returns and declare results.**—The county board of elections at their said meeting required to be held on the second day after every primary or election, in the presence of such electors as choose to attend, shall open the returns and canvass and judicially determine the results of the voting in the respective counties, stating the number of legal ballots cast in each precinct for each candidate, the name of each person voted for and the political party with which he affiliated, and the number of votes given to each person for each different office, and shall sign the same. The said county board of elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall have power and authority to send for papers and persons and examine the same, and to pass upon the legality of any disputed ballots transmitted to them by any precinct officer. (1933, c. 165, s. 8.)

Editor's Note.—The cases below, except for Strickland v. Hill, were decided before this section was rewritten in 1933 and the duties of the board of canvassers assigned to the board of elections. However, they seem applicable to the present law.

This section modifies or supersedes § 163-143 to the extent of any conflict. Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

Recounts.—Where a candidate in a primary election, prior to the time fixed for the county board of elections to canvass the returns, suggests errors in tabulating ballots in certain precincts because persons not legally qualified acted as counters and tabulators, but makes no assertion that any person voted who was not entitled to vote or that any qualified elector was prevented from voting, and files a written request for recount, the county board has authority, in the exercise of its judgment and discretion in good faith, to order and conduct a recount of the ballots cast and to certify the candidate having the majority of the votes as ascertained by such recount as the nominee of the party, notwithstanding that the returns of the precinct officials are regular upon their face. Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

Judicial Powers of Board of Canvassers.—The county board of canvassers are vested with statutory authority to judicially pass upon all facts relative to the election and to judicially determine and declare the results, and with the exercise of this discretion the courts will not interfere, except in an action to try title to the office by quo warranto. However, since by the Federal Constitution, Art. I, § 5, power is given to both houses of Congress to pass upon the election of members, an action in the nature of quo warranto cannot be brought to determine which candidate was elected to Congress. Britt v. Board, 172 N. C. 797, 90 S. E. 1005 (1916).

The returns made by the precinct officials constitute but a preliminary step in ascertaining the results of an election, and such returns must be canvassed and declared by the board of canvassers as an essential part of the election machinery, which board, after judicially determining the results, must issue a certificate of election to the successful candidate upon which he may qualify and enter into the discharge of the duties of the office State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

Returns Prima Facie Correct.—In proceedings in the nature of a quo warranto, to determine the respective rights of the parties contesting for an office, the result of the election, as declared by the county board of canvassers, must be taken as prima facie correct. State v. Jackson, 183 N. C. 695, 110 S. E. 593 (1922).

Same—Subject to Collateral Attack.—The decisions or judgments of the county board of canvassers are not of such conclusiveness or finality as to exclude collateral attack, and the use of the word "judicially" in this section does not affect the construction. State v. Midgett, 151 N. C. 1, 65 S. E. 441 (1909).

The correctness of the result of the election of a clerk of the superior court, determined and declared by the county board of canvassers, can be investigated, passed upon and determined in a civil action in the nature of a quo warranto, and such is the proper remedy. State v. Midgett, 151 N. C. 1, 65 S. E. 441 (1909).

Jurisdiction of Superior Court for Quo Warranto Not Ousted.—The act of the county canvassers in declaring the result of an election to public office, under this section, cannot have the effect of ousting the jurisdiction of the superior court in quo warranto or information in the nature thereof. Harkrader v. Lawrence, 190 N. C. 441, 130 S. E. 35 (1925).

Mandamus to Reconvene Board of Canvassers.—As to whether a board of canvassers can be compelled by mandamus to reconvene after its final adjournment, quaere; and semble, it can be done theretofore only for the purpose of requiring it to complete its labors, but not to reconsider its action Britt v. Board, 172 N. C. 797, 90 S. E. 1005 (1916).

Supplementary Returns after Adjournments of Registrar and Poll Holders.—Additional or supplemental returns made up by the county board of canvassers after the registrar and poll holders had fully performed their duties and adjourned, and without calling them together for reconsideration as a body, should not be given effect by the courts. Britt v. Board, 172 N. C. 797, 90 S. E. 1005 (1916).

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 163-87. Grouping certain returns on same abstract.—The abstract of votes for each of the following classes of officers shall be made on a different sheet:

(1) President and Vice-President.
(2) Governor and all State officers; justices of the Supreme Court; judges of the superior court; and United States Senator.
(3) Representatives in Congress.
(4) Solicitor.
(5) Senators and Representatives of the General Assembly.
(6) County officers.
(7) Township officers. (1933, c. 165, s. 8.)

§ 163-88. Preparation of original abstracts; where filed.—When the canvass has been completed, the county board of elections shall prepare on forms furnished by the State original statements of the results showing:

(1) Upon a single sheet an abstract of votes for President and Vice-President of the United States, when a presidential election is held.
(2) Upon another sheet an abstract of votes for Governor, and all State officers, judges of the Supreme Court, judges of the superior court and United States Senator.
(3) Upon another sheet an abstract of votes for Representatives to Congress.
(4) Upon another sheet an abstract of votes for solicitor.
(5) Upon another sheet an abstract of votes for State Senators and Representatives in the General Assembly.
(6) Upon another sheet an abstract of votes for county officers.
(7) Upon another sheet an abstract of votes for township officers for each township in the county.
(8) Upon another sheet an abstract of votes for all constitutional amendments and propositions submitted to the people.

Each of these abstracts shall be so prepared as to show the total number of votes cast for each candidate of each political party for each office in each precinct in the county.

Each of these original abstracts shall be signed by the members of the county board of elections with their certificate as to their correctness, and each of the original abstracts together with the original precinct returns shall be filed with the clerk of the superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8.)

Abstract Admissible as Substantive Evidence.—See State v. Ponder, 234 N. C. 294, 67 S. E. (2d) 292 (1951).

§ **163-89. Duplicate abstracts to be sent to State Board of Elections; penalty for failure to comply.**—When the county boards of elections shall have completed the original abstracts, they shall also prepare separate duplicate abstracts for all offices for which the State Board of Elections required to canvass the votes and declare the results, which shall include the following: For President and Vice-President; for State officers and United States Senator; for Representatives to Congress; for solicitors; and for State Senators in senatorial districts composed of more than one county; and for amendments and propositions submitted.

When said duplicate abstracts shall have been prepared, the county board of elections shall sign an affidavit on each abstract that they are true and correct; then the chairman of said board shall mail said duplicate abstracts, within five days after the primary or election is held, to the chairman of the State Board of Elections at Raleigh, so that said abstracts shall be received by the chairman of the State Board of Elections within one week after the primary or election.

The chairman of the county board of elections, failing or neglecting to transmit said abstracts to the chairman of the State Board of Elections within the time above prescribed shall be guilty of a misdemeanor and subject to a fine of one thousand dollars: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ **163-90. Clerk of superior court to send statement of votes to Secretary of State in general election.**—In a general election, the clerk of the superior court shall, within two days after the original abstracts are filed in his office by the county board of elections, certify under his official seal to the Secretary of State, upon blanks furnished to him by the State for that purpose, a statement of the votes cast in his county for all national, State and district officers, and for and against constitutional amendments and propositions submitted to the people. The clerk of superior court shall at the same time also certify under his official seal to the Secretary of State a list of all the persons voted for as members of the State Senate and House of Representatives and all county officers, together with the votes cast for each and their postoffice address.

The clerk of the superior court, failing or neglecting to transmit these returns to the Secretary of State within the time herein provided, shall be subject to a fine of five hundred dollars and be guilty of a misdemeanor: Provided, that the penalty herein prescribed shall not apply where said aforesaid officer was prevented from performing the duties herein prescribed because of sickness or other unavoidable delay, but the burden of proof shall be on such officer to show that his failure to perform his said duties was due to sickness or unavoidable delay. (1933, c. 165, s. 8.)

§ 163-91. Who declared elected by county board; proclamation of result.—In the general election, the person having the greatest number of legal votes for a county or township office, or for the House of Representatives, or for the State Senate in a district composed of only one county, shall be declared elected by the county board of elections. But, if two or more county candidates, having the greatest number of votes, shall have an equal number the county board of elections shall determine which shall be elected. Provided that a write-in candidate must receive as many as 5% of the votes cast for candidates for Congress in the township or county or other jurisdiction in which said write-in candidates is running as a prerequisite to his being elected.

When the county board of elections shall have completed the canvass, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door with the number of votes cast for each. (1933, c. 165, s. 8; 1957, c. 1263.)

Editor's Note.—The 1957 amendment added the proviso to the first paragraph.

The cases discussed below were decided prior to the 1933 amendment. The provisions of the former statute on this subject are now substantially set forth in the instant section.

Finding of Board Prima Facie Correct.—The finding by the board of canvassers as to the number of votes received by a contestant in an election is prima facie correct. State v. Flynt, 159 N. C. 87, 74 S. E. 817 (1912).

There is a final and conclusive presumption in favor of the correctness of the result of an election as declared by the proper officials, until the issues raised by the pleadings have been tried and disposed of before the jury. Wallace v. Salisbury, 147 N. C. 58, 60 S. E. 713 (1908).

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 163-92. Chairman of county board of elections to furnish county officers certificate of election.—The chairman of the county board of elections of each county shall furnish, within ten days, the member or members elected to the House of Representatives and the county officers, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified. The chairman of the county board of elections shall also issue a certificate of election to each township officer elected to office within the county: Provided, that where an election contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, either after a primary or a general election, the said county board of elections shall not certify the results of the primary or election for the office in controversy until the contest has been finally decided by the county or State Board of Elections, or until at least five days after the results of the election have been officially certified and public notice given of the results and no contest or appeals have been filed with the county board of elections contesting the official declared results. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3.)

Editor's Note.—The 1947 amendment added the last sentence.

The 1955 amendment added the proviso.

The 1959 amendment added the part of the section appearing after "Elections" at the end of the section.

Conclusiveness of Adjudication of Board and Certificate of Election.—The adjudication of the board and the resultant certificate of election constitute conclusive evidence of the certificate holder's right to the office in every proceeding except a direct proceeding under § 1-514 et seq. to try the title to the office. State v. Ponder, 234 N. C. 294, 67 S. E. (2d) 292 (1951).

Article 15.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-93. State Board of Elections to canvass returns for higher offices.—The State Board of Elections shall constitute the legal canvassing board for the State of all national, State and district offices, including the office of State Senator in those districts consisting of more than one county. No member of the State Board of Elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9.)

Supervisory Powers of Board.—The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct, and to compel the observance of the election laws by county boards of elections, and the duty of the State Board to canvass returns and declare the count, does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

§ 163-94. Meeting of State Board of Elections to canvass returns of the election.—The State Board of Elections shall meet in the city of Raleigh on the Tuesday following the third Monday after each general election held in this State under the provisions of this chapter, in the hall of the House of Representatives, at eleven o'clock A. M. for the purpose of canvassing the votes cast in all the counties of the State for all national, State and district officers and to determine whom they ascertain and declare by the count to be elected to the respective offices, and shall prepare abstracts of same as hereinafter provided. At this meeting, the Board shall examine the county abstracts, if they shall have been received from all of the counties, and if all have not been they may adjourn, not exceeding ten days for the purpose of obtaining the abstracts and returns from the missing counties, and when they have all been received the Board shall proceed with the canvass, which shall be conducted publicly in the hall of the House of Representatives. In obtaining the abstracts from the counties whose abstracts have not been received by the date of this meeting, the Board is authorized to obtain from the clerk of the superior court or the county board of elections, at the expense of such counties, the original abstracts or returns, or if they have been forwarded, copies of them. The State Board of Elections shall be authorized to enforce the penalties provided by law for the failure of a clerk of a superior court or a chairman of the county board of elections to comply with the law in making their returns of an election. (1933, c. 165, s. 9.)

§ 163-95. Meeting of State Board of Elections to canvass returns of a special election for congressmen.—In all cases of special elections ordered by the Governor to fill vacancies in the representation of the State in Congress as provided for in § 163-105, the State Board of Elections may meet as soon as the chairman of said Board shall have received returns from all of the counties entitled to vote in said special elections for the purpose of canvassing the returns of said special election and for preparing an abstract of same. It shall be the duty of the chairman of the State Board of Elections to fix the day of meeting which shall not be later than ten days after such elections, and it shall be the duty of all returning officers to make their returns promptly so that the same may be received within the ten days. (1933, c. 165, s. 9.)

§ 163-96. Board to prepare abstracts and declare results of elections.—The State Board of Elections, at the conclusion of its canvass of the general election, shall cause to be prepared the following abstracts:

(1) Upon a single sheet an abstract of votes for President and Vice-President of the United States when an election is held for same.

(2) Upon another sheet an abstract of votes for governor and all State officers, justices of the Supreme Court, judges of the superior court, and United State Senators.

(3) Upon another sheet an abstract of votes for Representatives to Congress for the several Congressional districts in the State.

(4) Upon another sheet an abstract of votes for solicitor in the several judicial districts in the State.

(5) Upon another sheet an abstract of votes for State Senators in the several senatorial districts in the State, where such districts are composed of more than one county.

(6) Upon another sheet an abstract of votes for and against any constitutional amendments or propositions submitted to the people.

These abstracts so prepared by said Board shall state the number of legal ballots cast for each candidate, the names of all persons voted for, for what office they respectively receive the votes, the number of votes each receive, and whom said Board shall ascertain and judicially determine and declare by the count to be elected to the office. These abstracts shall be signed by the State Board of Elections in their official capacity and have the great seal of the State affixed thereto. (1933, c. 165, s. 9.)

§ 163-97. Results certified to the Secretary of State; certificate of election issued.—After the State Board of Elections shall have ascertained the result of the election as hereinbefore provided, they shall cause the result to be certified to the Secretary of State, who shall prepare a certificate for each person elected, and shall sign the same, which certificate he shall deliver to the person elected, when he shall demand the same.

The State Board of Elections shall also file with the Secretary of State the original abstracts prepared by it, also the original county abstracts to be filed in his office. (1933, c. 165, s. 9.)

Cited in Ponder v. Cobb, 257 N. C. 281, 126 S. E. (2d) 67 (1962).

§ 163-98. Secretary of State to record abstracts.—The Secretary of State shall record the abstracts filed with him by the State Board of Elections in a book to be kept by him for recording the results of elections and to be called the election book, and shall also file the county abstracts. (1933, c. 165, s. 9.)

Article 16.

State Officers, Senators and Congressmen.

§ 163-99. Contested elections; how tie broken.—The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto by the State Board of Elections, but if two or more be equal and highest in votes for the said office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. In contested elections, the State Board of Elections shall certify to the Speaker of the House of Representatives a statement of such facts as the Board has relative thereto and such contests shall be determined by joint vote of both houses of the General Assembly in the same manner and under the same rules as described in cases of contested elections for members of the General Assembly. (1901, c. 89, s. 44; Rev., s. 4363; 1915, c. 121, s. 1; C. S., s. 5999; 1927, c. 260, s 14; 1933, c. 165, s. 10.)

Editor's Note.—The 1927 amendment rewrote this section.

The 1933 amendment substituted "State Board of Elections" for "State Board of Canvassers."

§ 163-100. Regular elections for Senators.—United States Senators to fill vacancies caused by the expirations of regular terms shall be elected by the people at the last regular election before each vacancy shall occur as now provided for State officers, and the tickets shall be furnished, blanks sent out and returns made as for State officers, and the returns canvassed and results declared in the same way. (1913, c. 114, s. 3; C. S., s. 6001.)

Editor's Note.—This and the two following sections were enacted in 1913 in consequence of the 17th Amendment to the Constitution of the United States, ratified May 31, 1913, which provides that United States Senators shall be elected by the people of each state. Prior to the Amendment, United States Senators were chosen by the legislatures of the several states.

§ 163-101. Governor to fill vacancies until general election.—Whenever there shall be a vacancy in the office of United States Senator from this State caused by death, resignation, or otherwise than by expiration of a term, the Governor shall appoint to fill the vacancy till there shall be an election. (1913, c. 114, s. 1; C. S., s. 6003; 1929, c. 12, s. 2.)

Editor's Note.—The 1929 amendment provided that this section should be reenacted.

§ 163-102. Election of Senator to fill unexpired term.—If such vacancy shall occur more than thirty days before any general State election, the Governor shall issue his writ for the election by the people, at the next general election, of a Senator to fill the unexpired part of the term, and said election shall take effect from the date of the canvassing of the returns, and the State Board of Elections may meet at the call of the chairman as soon as he shall have received returns from all of the counties and prepared an abstract of same for the purpose of canvassing the returns and certifying the results of said election. (1913, c. 114, s. 2; C. S., s. 6002; 1955, c. 871, s. 6.)

Editor's Note.—The 1955 amendment rewrote the latter part of the section following the word "returns" near the middle of the section.

§ 163-103. Congressional districts specified.—For the purpose of selecting representatives to the Congress of the United States, the State of North Carolina shall be divided into eleven districts as follows:

First District: Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell and Washington counties.

Second District: Edgecombe, Franklin, Greene, Halifax, Lenoir, Northampton, Vance, Warren and Wilson counties.

Third District: Carteret, Craven, Duplin, Harnett, Jones, Onslow, Pamlico, Pender, Sampson and Wayne counties.

Fourth District: Chatham, Davidson, Johnston, Nash, Randolph and Wake counties.

Fifth District: Caswell, Forsyth, Granville, Person, Rockingham, Stokes, Surry and Wilkes counties.

Sixth District: Alamance, Durham, Guilford and Orange counties.

Seventh District: Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Robeson and Scotland counties.

Eighth District: Anson, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Richmond and Union counties.

Ninth District: Alexander, Alleghany, Ashe, Cabarrus, Caldwell, Davie, Iredell, Rowan, Stanly, Watauga and Yadkin counties.

Tenth District: Avery, Burke, Catawba, Cleveland, Gaston, Mitchell and Rutherford counties.

Eleventh District: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Polk, Swain, Transylvania and Yancey counties. (Rev., s. 4366; 1911, c. 97; C. S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864.)

Editor's Note.—The 1931 amendment changed the number of congressional districts from ten to eleven, and the 1941 amendment increased the number to twelve.

The 1961 amendment changed the number of congressional districts from twelve to eleven.

§ **163-104. Election after reapportionment of congressmen.**—Whenever, by a new apportionment of Representatives among the several States, the number of Representatives in the Congress of the United States from North Carolina shall be either increased or decreased, and neither the Congress nor the General Assembly shall provide for the election of the same, then if the said Representatives shall be increased, the increased number shall be elected by the qualified voters of the whole State, and shall be voted for on one ballot, and the Representatives from the several Congressional districts shall be elected by the voters of said districts, respectively, and shall each be voted for on another ballot; but if the number of said Representatives shall be decreased as aforesaid, in that event all the Representatives in Congress shall be elected by the qualified voters of the whole State and shall be voted for on one ballot. (1901, c. 89, s. 58; Rev., s. 4368; C. S., s. 6006.)

§ **163-105. Special election for congressmen.**—If at any time after expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in the representation in Congress, the Governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships in their respective counties at such times as may be appointed therein, and at the places established by law, then and there to vote for a Representative in Congress to fill the vacancy; and the election shall be conducted in like manner as regular elections.

In the event such vacancy occurs within eight months preceding the next succeeding general election, nominations of candidates in a special election for Representative in Congress to fill a vacancy may be made by the several political party congressional executive committees in the district in which such vacancy occurs, for each political party respectively. It shall be the duty of the chairman and secretary of each political party congressional executive committee making such a nomination of a candidate in a special election to immediately certify to the State Board of Elections the name and party affiliation of the nominee so selected prior to the printing of the special election ballots.

In the event such vacancy occurs more than eight months prior to the next succeeding general election, then a special primary election shall be called by the Governor. Such special primary election shall be conducted in accordance with the laws governing general primaries, except that the closing date for filing notices of authority with the State Board of Elections shall be fixed by the Governor in his call for the primary, and shall be for the purpose of nominating candidates, to be voted upon thereafter in a special election to be called by the Governor as hereinbefore provided in the first paragraph of this section. The candidate elected in this special election shall fill such vacancy in the representation in Congress. (1901, c. 89, s. 60; Rev., s. 4369; C. S., s. 6007; 1947, c. 505, s. 5.)

Editor's Note.—The 1947 amendment added the second and third paragraphs.

§ **163-106. Certificate of election for congressmen.**—Every person duly elected a Representative to Congress, upon obtaining a certificate of his election from the Secretary of State, shall procure from the Governor a commission, certifying his appointment as a Representative of the State, which the Governor shall issue on such certificate being produced. (1901, c. 89, s. 61; Rev., s. 4370; C. S., s. 6008.)

ARTICLE 17.

Election of Presidential Electors.

§ 163-107. Conduct of presidential election.—The election of presidential electors shall be conducted and the returns made as nearly as may be directed in relation to the election of State officers, except as herein otherwise expressed. (1901, c. 89, s. 79; Rev., s. 4371; C. S., s. 6009; 1933, c. 165, s. 11.)

§ 163-108. Arrangement of names of presidential electors.—The names of candidates for electors of President and Vice-President of any political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party shall not be placed on the ballot, but shall after nomination be filed with the Secretary of State. In place of their names there shall be printed first on the ballot the names of the candidates for President and Vice-President, respectively, of each party or group of petitioners who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the Secretary of State. (1901, c. 89, s. 78; Rev., s. 4372; C. S., s. 6010; 1933, c. 165, s. 11; 1949, c. 672, s. 2.)

Editor's Note.—See 11 N. C. Law Rev. 229, for a discussion of changes made in this section by the 1933 amendment.

The 1949 amendment inserted the clauses as to having qualified as a political party under § 163-1.

§ 163-109. How returns for President shall be made.—The county board of elections shall meet at the courthouse on the second day next after every election for President and Vice-President, and shall ascertain and determine the number of legal votes cast for the electors for President and Vice-President and shall prepare abstracts and make their returns to the State Board of Elections in the same manner as hereinbefore provided for State officers. (1901, c. 89, s. 80; Rev., s. 4373; C. S., s. 6011; 1927, c. 260, s. 16; 1933, c. 165, s. 11.)

§ 163-110. Declaration and proclamation of results by State Board; casting of State's votes for President and Vice-President.—The State Board of Elections shall canvass the returns for electors for President and Vice-President at the same time and place as hereinbefore required to be made for State officers, and an abstract for same shall be prepared and certified to the Secretary of State in the same manner.

The Secretary of State shall, under his hand and seal of his office, certify to the Governor the names of as many persons receiving the highest number of votes for electors of President and Vice-President of the United States as the State may be entitled to in the Electoral College. The Governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon on the first Monday after the second Wednesday in December next after his election, at which time the said electors shall meet, and then and there give their votes on behalf of the State of North Carolina for President and Vice-President of the United States. In case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the State so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for the President and Vice-President of the United States. And the Governor shall, on or before the said first Monday after the second Wednesday in December, make out six lists of the names of the said persons so elected and appointed electors and cause the same to be delivered to them, as directed by the Act of Congress.

(1901, c. 89, s. 81; Rev., s. 4374; 1917, c. 176, s. 2; C. S., ss. 5916, 6012; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2.)

Editor's Note.—By the 1935 amendment the meetings were changed from the second Monday in January to the first Monday after the second Wednesday in December.

§ **163-111. Compensation of presidential electors.**—Presidential electors shall receive, for their attendance at the meeting of said electors in the city of Raleigh, the sum of $10.00 (ten dollars) per day and traveling expenses at the rate of 5¢ (five cents) per mile in going to and returning from said meeting. (1901, c. 89, s. 84; Rev., s. 2761; C. S., s. 3878; 1933, c. 5.)

Editor's Note.—Prior to the 1933 amendment, this section provided for traveling expenses and compensation the same as allowed members of the General Assembly.

§ **163-112. Penalty for presidential elector failing to attend and vote.**—Each elector, with his own consent previously signified, failing to attend and vote for a President and Vice-President of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident), shall forfeit and pay to the State five hundred dollars, to be recovered by the Attorney General in the Superior Court of Wake County. (1901, c. 89, s. 83; Rev., s. 4375; C. S., s. 6013; 1933, c. 165, s. 11.)

Article 18.

Miscellaneous Provisions as to General Elections.

§ **163-113. Agreements for rotation of candidates in senatorial districts of more than one county.**—When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for Senator, or any one of the candidates for Senator, of any political party (as the words "political party" are defined in the first section of this subchapter) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county officers in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of Senator, made as hereinbefore provided, shall be certified by the chairman of the county board of elections of the county in which the nomination is made, to each chairman of the county board of elections in all of the counties constituting the senatorial district, and it shall be the duty of each chairman of the other counties to which the nominations are certified to print the name or names of the nominee or nominees on the official county ballot for the general election. (1911, c. 192; C. S., s. 6014; 1947, c. 505, s. 6.)

Editor's Note.—The 1947 amendment rewrote the second sentence.

§ **163-114. Judges and solicitors; commission; when term begins.**—Justices of the Supreme Court, judges of the superior court, and solicitors shall be commissioned by the Governor, and their terms of office shall begin on the first day of January next succeeding their election. An election for officers, whose terms shall be about to expire, shall always be held at the general election next preceding the expiration of their terms of office. (1901, c. 89, s. 69; Rev., s. 4377; C. S., s. 6015.)

§ **163-115. Registrars to permit copying of poll and registration books.**—In any primary or general election held in this State, and at any time prior to the holding of such primary or general election, and while the registration and poll books shall be in the hands of any registrar, it shall be the duty of such registrar, on application of any candidate or the chairman of any political party, to permit said poll book or registration book to be copied: Provided, such poll book or registration book shall not be removed from the polling place if there, or the residence of such registrar, if there: Provided, also, it shall be lawful for such registrar himself to furnish to such applicant, in lieu of the books themselves, a true copy of the same, for which service he shall be entitled to receive two cents per name. Any person willfully failing or refusing to comply with the provisions and requirements of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (1901, c. 89, s. 83; Rev., s. 4382; C. S., s. 6016; 1931, c. 80; 1959, c. 883.)

Editor's Note.—The 1931 amendment rewrote this section.

The 1959 amendment substituted "two cents" for "one cent" in the last proviso to the first sentence.

§ **163-115.1. Copies of registration in counties having loose-leaf and visible registration system and permanent registration.**—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, it shall be the duty of the county board of elections, on application of any candidate, or the chairman of any political party, or any other person, to furnish a copy or copies of the registration. Such lists shall be furnished upon such cards, postal cards, or envelopes, and at such charges as may be fixed by such county board of elections. In case the list is a partial or selected list by party affiliation, sex, color, date of registration, or any other selection the county board of elections may see fit to prescribe and make, the charge therefor may be based upon the total registration of the precinct or precincts from which such selected list is made, regardless of the number of selected names upon such list so made. In such county no registrar shall furnish registration lists or permit a copy of the registration. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ **163-116. Forms for returns sent to proper officers by State Board of Elections.**—The State Board of Elections shall cause proper forms of returns to be prepared and printed, and send copies thereof, with plain directions as to the manner of endorsing, directing, and transmitting the same to the seat of government, to all of the returning officers of the State, at least thirty days before the time for holding any election. The said Board shall also furnish to the clerk of the superior court of each county all such printed blanks as may be necessary for making the county returns. (1901, c. 89, s. 43; Rev., s. 4383; C. S., s. 6017; 1921, c. 181, s. 5; 1927, c. 260, s. 18.)

Editor's Note.—Prior to the 1921 amendment the duties of the State Board of Elections under this section were required to be performed by the Secretary of State. Prior to the 1927 amendment, the printed blanks were furnished to the register of deeds instead of to the clerk of the superior court.

SUBCHAPTER II. PRIMARY ELECTIONS.

ARTICLE 19.

Primary Elections.

§ **163-117. Date for holding primaries.**—On the last Saturday in May next preceding each general election to be held in November for State officers, Representatives in Congress, district officers in districts composed of more than one county, and members of the General Assembly of North Carolina, or any such officers, there shall be held in the several election precincts within the territory for which such officers are to be elected a primary election for the purpose of nominating candidates of each and every political party in the State of North Carolina for such offices as hereinafter provided; and at such primary election next preceding the time for the election of a Senator for this State in the Congress of the United States there shall likewise be nominated the candidate of each political party in this State for such office of United States Senator.

This subchapter shall not apply to the nomination of candidates for presidential electors. Presidential electors shall be nominated in a State convention of each political party as defined in § 163-1 unless otherwise provided by the plan of organization of such political party. One presidential elector shall be nominated from each congressional district and two from the State at large. (1915, c. 101, s. 1; 1917, c. 218; C. S., s. 6018; 1939, c. 196; 1951, c. 1009, s. 2.)

Local Modification.—Session Laws 1945, c. 894, repealed this article insofar as its provisions apply to the nomination of democratic candidates for the General Assembly and county offices in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provides that this article shall not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates shall be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484 provides that this article shall not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates shall be nominated by conventions of the Republican Party.

Editor's Note.—The 1939 amendment substituted, near the beginning of the section, the words "last Saturday in May" for the words "first Saturday in June." The 1951 amendment added the second paragraph.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made this article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made this article applicable to Yancey County. Session Laws 1955, c. 442, made this article applicable to the counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Article Is Constitutional.—The primary law, as amended by the Australian Ballot Law (§ 163-148 et seq.), is reasonable and constitutional. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

It must be construed in pari materia with article 20 of this chapter. Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936); McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

The manifest purposes of the primary system set up by our laws is to secure to the members of an existing political party freedom of choice of candidates, and to confine the right of qualified electors to vote in party primaries to the primary of the existing political party of which they are members at the time of holding of such primary. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

There is a well-defined distinction between a primary election and a regular election. A primary election is a means provided by law whereby members of a political party select by ballot candidates or nominees for office; whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, whereas a regular election is the final choice of the entire electorate. Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

The primary law provides an exclusive method for nomination of candidates for office, and a candidate who has not complied with its provisions is not the nominee of any political party within the law. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

The primary laws have no application to new political parties created by petition under § 163-1. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Rider v. Lenoir County, 236 N. C. 620, 73 S. E. (2d) 913 (1952); Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-118. Primaries governed by general election laws.—Unless otherwise provided in this article, such primary elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of this State, and all the provisions of this chapter and of other laws governing elections not inconsistent with this article shall apply as fully to such primary elections and the acts and things done thereunder as to general elections; and all acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held hereunder. (1915, c. 101, s. 3; 1917, c. 218; C. S., s. 6020.)

Quoted in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

Cited in State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25 (1941).

§ 163-119. Notices and pledges of candidates; with whom filed.—Every candidate for selection as the nominee of any political party for the offices of Governor and all State officers, justices of the Supreme Court, the judges of the superior court, United States Senators, members of Congress, and solicitors to be voted for in any primary election shall file with and place in the possession of the State Board of Elections, by twelve o'clock noon on or before Friday preceding the tenth Saturday before such primary election is to be held, a notice and pledge in the following form, the blanks being properly filled in and the same signed by the candidate:

"I hereby file my notice as a candidate for the nomination as .... in the primary election to be held on .... I affiliate with the .... party, and I hereby pledge myself to abide by the results of said primary, and to support in the next general election all candidates nominated by the .... party. I further pledge myself that if I am defeated in said primary, I will not run for any office as a write-in candidate in the next general election."

Every candidate for selection as the nominee of any political party for the office of State Senator in a primary election, member of the House of Representatives, and all county and township offices shall file with and place in the possession of the county board of elections of the county in which they reside by twelve o'clock noon on or before the Friday preceding the sixth Saturday before such primary election is to be held a like notice and pledge.

The notice of candidacy required by this section to be filed by a candidate in the primary must be signed personally by the candidate himself or herself, and such signature of the candidate must be signed in the presence of the chairman or secretary of the board of elections with whom such candidate is filing, or a candidate must have his or her signature on the notice of candidacy acknowledged and certified to by any officer authorized to administer an oath. Any notice of candidacy of any candidate signed by an agent in behalf of a candidate shall not be valid. No person shall be permitted to file as a candidate of any political party in a party primary when such person, at the time of filing his or her notice of candidacy, is registered on the registration book as an affiliate of a different political party from that party in whose primary he or she is now attempting to file as a candidate. Any unregistered person who desires to become a candidate in a party primary may do so if such person signs a written pledge with the chairman along with the filing form that he or she will, during the registration period just prior to the next primary, register as an affiliate of the political party in whose primary he or she now intends to run as a candidate. Any person registered as an Independent, or with no party affiliation recorded on the registration book, shall not be eligible to file as a candidate in a primary election. (1915, c. 101, s. 6; 1917, c. 218; C. S., s. 6022; 1923, c. 111, s. 13; 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4.)

Editor's Note.—This section was amended in 1933 so as to change the time for filing the notice for candidacy from six weeks to the seventh Saturday before the primary date. See 11 N. C. Law Rev. 230. The 1937 amendment changed this to the tenth Saturday before the election, and substituted "sixth Saturday" for "fourth Saturday" formerly appearing in the second paragraph.

The 1947 amendment added the first two sentences of the last paragraph. The 1949 amendment substituted in the first paragraph "12:00 noon" for "6:00 P. M." The 1951 amendment added the last two sentences of the last paragraph.

The first 1955 amendment substituted in the next to the last paragraph "twelve o'clock noon" for "six o'clock p. m." The second 1955 amendment inserted "Friday preceding the tenth Saturday before such primary election" in lieu of "the tenth Saturday before such primary election" formerly appearing in the first paragraph.

The 1959 amendment added the second sentence to the notice of candidacy form, and the last sentence to the last paragraph. The amendment also inserted in the next to last paragraph the words "the Friday preceding," and subsequently in the same sentence inserted "election" after the word "primary."

Obligation Imposed upon Candidate.—This section attempts to place upon a candidate who seeks nomination to public office in the primary election of an existing political party an obligation to adhere to such existing political party for at least a limited time in the future. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Ratcliff v. Rodman, 258 N. C. 60, 127 S. E. (2d) 788 (1962).

§ 163-120. Filing fees required of candidates in primary.—At the time of filing a notice of candidacy for nomination for any congressional or State office, including judges of the Supreme and superior court and solicitors, each candidate for such office shall pay to the State Board of Elections a filing fee of one per cent of the annual salary of such office. At the time of filing a notice of candidacy for nomination for any legislative or county office, each candidate for such office shall pay to the county board of elections of the county of their residence a filing fee of one per cent of the annual salary of such office: Provided, that all candidates for nomination for any county or township office operated on a fee basis shall pay to the county board of elections a flat filing fee as follows: County commissioners, ten dollars ($10.00); county board of education, five dollars ($5.00); sheriff, clerk of the superior court and register of deeds, forty dollars ($40.00) plus one per cent (1%) of the income of the office above four thousand dollars ($4,000.00); and any other county office on a fee basis, twenty dollars ($20.00), plus one per cent (1%) of the income of the office above two thousand dollars ($2,000.00); township constable, ten dollars ($10.00), plus one per cent (1%) of the income of the office above one thousand dollars ($1,000.00); and justice of the peace, ten dollars ($10.00), plus one per cent (1%) of the income of the office above one thousand dollars ($1,000.00). The filing fees which shall be paid by candidates for a county or township office operated on a part salary and part-fee basis shall be one per cent (1%) of the first annual salary received and shall not include any fees received. (1915, c. 101, s. 4; 1917, c. 218; 1919, c. 139; C. S., s. 6023; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5.)

Local Modification.—Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Editor's Note.—This section was amended in 1933 so as to change the basis of candidacy fees from a flat sum for each office to a percentage of the salary of the office. See 11 N. C. Law Rev. 230.

The 1939 amendment changed the filing fee in the second sentence from one-half of one per cent to one per cent. It also changed the proviso.

The 1959 amendment rewrote the part of the section beginning with "Provided" in the second sentence.

Filing Fee Is Not a Tax.—The filing fee required by this section is in no sense a tax within the meaning of Art. II, § 14, or a local law as condemned by Art. II, § 29, or the Constitution of North Carolina. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

§ 163-121. Fees erroneously paid refunded.—Where a candidate erroneously files a notice of candidacy, accompanied by the proper sum of money, with the State Board of Elections, instead of with the local county board, and the money is paid into the State treasury; or where a candidate files a notice, accompanied by the sum fixed by law with the State Board, the money being paid into the State treasury, and afterwards, but before the time for filing such notices, as fixed by law, shall have expired, he wishes to withdraw his candidacy, then, in both these cases, the money may be refunded to the candidate, upon certificate from the chairman of the State Board of Elections that the facts exist which entitle him to such refunding. Upon such certificate, the Auditor shall give his warrant upon the Treasurer of the State, and the Treasurer shall pay the same. (1919, c. 50; C. S., s. 6024.)

§ 163-122. Payment of expense for primary elections.—The expense of printing and distributing the poll and registration books, blanks, ballots for those offices hereinafter provided to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of the duties herein imposed, shall be paid by the State; and the expenses of printing and distributing the ballots hereinafter provided to be furnished by the counties, and the per diem and expenses of the county board of elections, and the registrars and judges of election, while engaged in the discharge of the duties herein imposed, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections. (1915, c. 101, s. 7; 1917, c. 218; C. S., s. 6026; 1927, c. 260, s. 21; 1933, c. 165, s. 14.)

§ **163-123. Registration of voters.**—The regular registration books shall be kept open before the primary election in the same manner and for the same time as is prescribed by law for general elections, and electors may be registered for both primary and general elections.

No person shall be entitled to participate or vote in the primary election of any political party unless he be a legal voter, or shall become legally entitled to vote at the next general election, and has first declared and had recorded on the registration book that the affiliates with the political party in whose primary he proposes to vote and is in good faith a member thereof, meaning that he intends to affiliate with the political party in whose primary he proposes to vote and is in good faith a member thereof.

Under this section any person who will have become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by age or residence by the date of the primary election, shall be entitled to register and vote in the said primary election if otherwise qualified; provided, such person shall register while the registration books are open prior to the primary election in compliance with the provisions set forth in the above paragraph and in other registration requirements. No such person shall be permitted to register on the day of the first or second primary under this provision who fails to register during the regular registration period prior to such primary. (1915, c. 101, s. 5; 1917, c. 218; C. S., s. 6027; 1959, c. 1203, s. 6.)

Cross References.—As to new State-wide registration of voters, see § 163-43. As to effect of voting in primary on future conduct of voter, see notes to § 163-126.

Editor's Note.—The 1959 amendment added the third paragraph.

§ **163-124. Notices filed by candidates to be certified; printing and distribution of ballots.**—When the time for filing notices by candidates for nomination shall have expired, the chairman of the State Board of Elections shall within three days thereafter certify the facts as to such notices as have been filed with it to the Secretary of State; and in the senatorial districts composed of more than one county where there is no agreement as provided for in § 163-113, the chairman or secretary of the county board of elections of each county in such senatorial district shall, within three days after the time for filing such notice shall have expired, certify to every other chairman of the county board of elections in such senatorial district the names of all candidates who have filed notice of candidacy in their respective county for the office of the State Senator; and said chairman, acting under the direction of the State Board of Elections and under such rules and regulations as may be prescribed by it, shall, without delay, at the expense of the State, cause a sufficient number of official ballots to be printed for each political party having candidates to be voted for in the primary and distributed to the chairman of the county boards of elections in the several counties, upon which ballot shall appear the names of candidates who shall, under the provisions of this article, have filed notice of their candidacy and otherwise complied with the requirements of this article, except candidates for offices ballots for which are herein provided to be printed by the several county boards of elections, so that such ballots shall be received by the respective county boards of elections at least thirty days before the date of holding such primaries. The expense of printing and distributing such official ballots shall be paid by the State Treasurer out of funds appropriated to the State Board of Elections, in accordance with the Executive Budget Act. Said ballots so printed by the State Board of Elections shall be for each of the several political parties in the State, as hereinafter defined and described, and the names of the respective parties and the candidates shall be printed on the ballots prepared for the respective parties with which the candidates affiliate, and upon the ballots the office for which each aspirant is a candidate shall be indicated. Three days before the primary election the chairmen of the county boards of elections shall distribute the official ballots to the several registrars in their respective counties, and take a receipt therefor, and the registrars shall have them at the several polling places for the use of the electors at the time of holding the primary. Any election or other officer who shall accept appointment and who shall, without previously resigning, fail to perform in good faith the duties prescribed in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1915, c. 101, s. 8; 1917, c. 218; C. S., s. 6028; 1927, c. 260, s. 22.)

Editor's Note.—The 1927 amendment struck out a provision requiring the chairman of the State Board of Elections to certify to the appropriate county boards of elections as to the facts of notice filed by the candidates for nomination for the State Senate in districts composed of two or more counties, and inserted in lieu thereof the part of the section beginning with "and in the senatorial districts" and ending with "office of the State Senator."

Possession of Ballots.—This section makes it the duty of the county board of elections to keep in its possession official ballots until delivery to the local officials. State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25 (1941).

§ **163-125. Only official ballots to be voted; contents and printing of ballots.**—There shall be voted in primary elections only the official ballots furnished to the chairmen of the county board of elections and by them to the registrars; and if other ballots be voted in a party primary, they shall not be counted. There shall be as many kinds of official ballots as there are political parties, members of which have filed notice of their candidacy for primary elections. (1915, c. 101, s. 9; 1917, c. 218, C. S., s. 6029.)

§ **163-126. How primary conducted; voter's rights; polling books; information given; observation allowed.**—When an elector offers himself and expresses the desire to vote at a primary held under this article, he shall declare the political party with which he affiliates and in whose primary he desires to vote, as hereinbefore provided, and he shall then be furnished by the registrar ballots, as desired by him, of the political party with which he affiliates, which he may vote, and he shall not in such primary be allowed to vote a ticket marked with the name of any political party of which he has not declared himself to be a member as herein defined; but anyone may at any time any elector proposes to vote challenge his right to vote in the primary of any party upon the ground that he does not affiliate with such party or does not in good faith intend to support the candidates nominated in the primary of such party, and it shall be the duty of the registrar and judges of election upon such challenge to determine whether or not the elector has a right to vote in said primary: Provided, that he may vote for candidates for all or any of the offices printed on such ballot, as he shall elect, and he shall be required to disclose the name of the political party printed thereon and no more. He may in the manner hereinbefore prescribed mark such names as he desires, and these and only these shall be counted as being voted for by him, and he shall have the right to so vote for only one candidate as his choice for each office. If he be a qualified elector and has elected to vote in the primary of a party of which he has declared himself to be a member, as provided herein, he may deposit his ballots in the proper ballot boxes, or he may permit the registrar or a judge of election to so deposit them for him.

At the time of voting, the name of the voter shall be entered on a primary polling book to be provided and kept for the purpose, under rules prescribed by the State Board of Elections, which said book shall be provided at the expense of the State for all State primaries and State elections, and upon said book shall be entered, opposite the name of such voter and in proper column provided for the purpose, the name of the political party whose ticket he shall have voted, and said books shall be filed for safekeeping, until the next election, in the clerk's office of the county in which the ballots are so cast.

It shall be the duty of the county board of elections and of the judges and registrar in each precinct to make all necessary arrangements by providing a proper number of places in each precinct whereby each voter shall have an opportunity, both at all primary and all general elections, to arrange his ballot in secret and without interference from any other person whatsoever; and it shall be the duty of the judges of election and registrars holding primary and general elections to give any voter any information he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and in response to questions asked by him, they shall communicate to him any information which he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information necessary to enable him to mark his ballot as he desires.

At the written request of the chairman of any political party of any county, the judges and registrar of any precinct shall designate the name of some elector in each precinct, if there be such elector who affiliates with such political party, who shall be furnished the opportunity to observe the method of holding such primary election; but such elector shall in no manner interfere with the method of holding such election or interfere or communicate with or observe any voter in casting his ballot, but shall make such observation and notes of the manner of holding such election and the counting of the ballots as he may desire: Provided, nothing herein contained shall be construed to prevent any elector from casting at the general election a free and untrammeled ballot for the candidate or candidates of his choice. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1959, c. 1203, s. 7.)

Cross Reference.—See § 163-180.

Editor's Note.—By the 1923 amendment the name of the third ballot box was changed from "Legislative Primary Box" to "Legislative and County Primary Box." Prior to the 1921 amendment the polling book provided for by the second paragraph of this section was to be furnished at the expense of the State for the first election held under this article, and subsequently at the expense of the several counties. The amendment requires that it be furnished at the expense of the State for all the State primaries and State elections.

The 1959 amendment deleted the former last sentence of the first paragraph. For somewhat similar provision, see the last paragraph of § 163-123.

This section secures to the member of an existing political party freedom of choice of candidates by providing that he may vote for candidates for all or any of the officers printed on the ballots of the political party with which he affiliates "as he shall elect and that he shall disclose the name of the political party printed thereon and no more." States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Voter Need Not Support Candidates of Party in Whose Primary He Voted.—This section and § 163-123 confine the right of a qualified elector to vote in party primaries to the primary of the existing political party with which he affiliates at the time of the holding of the primary. But they do not undertake to deprive the voter of complete liberty of conscience or conduct in the future in the event he rightly or wrongly comes to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948). See § 163-126.

He May Sign Petition to Establish New Party under § 163-1.—Thus regulations of the State Board of Elections conflict with this and other pertinent sections of this subchapter if they attempt to set up and establish a rule that voting in the primary election of an existing political party disables qualified electors to sign a petition for the creation of a new political party under § 163-1 during the year in which such primary election is held. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Burgin v. North Carolina State Board, 214 N. C. 140, 198 S. E. 592 (1938).

§ 163-126.1. Permanent poll record in counties having loose-leaf and visible registration system.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, separate poll books as required by G. S. 163-126 shall not be required and kept and in lieu thereof the county board of elections shall provide a permanent poll record to be kept upon the registration certificates in the form approved by the county board of elections. (1953, c. 843; 1955, c. 1142; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment struck out the following words: "two or more municipalities, each with a population in excess of 35,000," and substituted therefor the words "one or more municipalities with a population in excess of 10,000."

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-127. Counting ballots and certifying results.—When the polls have been closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election at the several precincts and such electors as may desire to be present: Provided, the registrars and judges may fix such space as they may consider reasonable and necessary to enable them to count the ballots. The ballots of each of the several parties in the boxes in each precinct shall be counted and bound in separate packages, and the result shall be certified to the proper county board of elections and by them to the State Board of Elections upon blanks to be provided by the State Board of Elections at the expense of the State within the time and, as near as may be, in the manner provided for the certification of the result of general elections. (1915, c. 101, s. 12; 1917, c. 218; C. S., s. 6032.)

When Ballot Found in Wrong Box.—In primary elections for county officers the registrar and judges of election are authorized not only to pass upon the qualification of voters therein, but to determine whether a ballot found in the wrong box was placed there by mistake, and, if satisfied of the mistake, to count the ballots for the one for whom they had been cast, in making their returns to the county board. Bell v. County Board, 188 N. C. 311, 124 S. E. 311 (1924).

Distinguished from General Elections.—In primary elections the return for county officers must be certified as this section requires to the county board of elections, which shall publish the result, the distinction between elections of this character and general elections being that in the former there is no right to an election to public office which may be put in issue and determine by quo warranto, and no provision for a board of canvassers with power judicially to determine the precinct return. Bell v. County Board, 188 N. C. 311, 124 S. E. 311 (1924).

§ 163-128. Names to be printed on official ballot; where only one candidate.—Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary elections shall have their names printed on the official ballot of their respective political parties. In all cases where only one aspirant for nomination for a particular political office to be voted for by his political party on the State or district ballot or, for the State Senate in districts composed of two or more counties shall have filed such notice, the board of elections of the State shall, upon the expiration of the time for filing such notices, declare him the nominee of his party, and his name shall not therefore be placed on the primary ballot, but shall be placed on the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 13; 1917, c. 218; C. S., s. 6033.)

Cited in McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942); Ingle v. State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

§ 163-129. Primaries for county offices; candidates to comply with requirements.—At the time of holding primary elections for State officers, as hereinbefore provided, there shall likewise be held primary elections for the nomination of the candidates of the several political parties in the State for county offices; and no one shall be voted for in such primary elections for the nomination of candidates for county offices unless he shall have filed a notice with the appropriate county board of elections and shall have taken the pledge required of candidates filing notice with the State Board of Elections, as hereinbefore provided, and shall have otherwise complied with the requirements applicable to such candidates for nomination for State offices, except in so far as such requirements are modified by the provisions of this article with reference to candidates for primary nominations for county offices. (1915, c. 101, s. 14; 1917, c. 218; C. S., s. 6034.)

Local Modification.—Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958.

Cited in McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

§ **163-130. Primaries for county offices; notices of candidacy and official ballots.**—The State Board of Elections, prior to the time fixed by law for the appointment of registrars and judges of primary elections, shall prescribe, print, and furnish to the several county boards of elections a sufficient number of notices to be filed by candidates desiring nomination for county offices, which said notices shall be substantially the same in form as those required to be filed by candidates for primary nomination for State offices as hereinbefore provided; and the several county boards of elections shall have printed and shall provide official ballots for county officers similar in form and otherwise to the ballots hereinbefore provided for State officers, and shall distribute the same to the several precincts in the manner and at the time hereinbefore prescribed in the case of State offices. (1915, c. 101, s. 15; 1917, c. 218; C. S., s. 6035.)

§ **163-131. Primaries for county offices; voting and returns.**—In primary elections for the selection of candidates for county offices the voting shall be done in the manner hereinbefore prescribed for primary elections for State offices, and all of the provisions herein contained governing primary elections for State offices shall apply with equal force to primary elections for county offices when not inconsistent with other provisions herein with reference to such primary elections for county officers; and the returns in such primary elections for county officers shall be certified to the appropriate county board of elections, which shall declare and publish the results. (1915, c. 101, s. 16; 1917, c. 218; C. S., s. 6036.)

§ **163-132. Primary ballots; provisions as to names of candidates printed thereon.**—It shall be the duty of the State Board of Elections to print and furnish to the counties for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed for in § 163-124, which official ballots shall have printed thereon the names of candidates for the United States Senate, for the national House of Representatives, and for Governor and for all other State offices, with the exception of the office of solicitor and judge of the superior court. All of these candidates, ballots for which are required to be furnished by the State, may be printed on one form of ballot or they may be printed on a number of forms of ballots as may be decided by the State Board of Elections.

It shall be the duty of the county board of elections to print and furnish to the voting precincts in the county for primary elections a sufficient number of official ballots for each political party having candidates to be voted for in the primary within the time prescribed in § 163-124, which official ballot shall have printed thereon the names of candidates for the following offices in the order in which they are named and shall be known as the "official primary ballot for judge superior court, solicitor, State Senator and county and township offices" when candidates for all of said offices are participating in the primary within the county. Whenever there is no contest for any of the aforesaid offices, then such names will not appear on the county ballot. The county board of elections may print the township ballot separate from the county ballot if it should so desire.

The ballots to be printed by the counties shall be of such width, color, form and printed in such type and on such paper as the State Board of Elections may direct.

It shall be the duty of the chairman of the State Board of Elections to certify to the chairman of the county board of elections in each county, by the fourth Saturday before each primary election, the names of such candidates for the nomination for judge of the superior court and solicitor as have filed the required notice and pledge and filing fee with the State Board of Elections and entitled to have their names placed on the official county ballot, and it shall be the duty of each county chairman to acknowledge receipt within two days after the receipt of the letter of certification to the chairman of the State Board of Elections so that the State chairman will know that each candidate's name has been properly certified and received. (1915, c. 101, s. 17; 1917, c. 218; C. S., s. 6037; 1933, c. 165, s. 16.)

Cited in State v. Abernethy, 220 N. C. 226, 17 S. E. (2d) 25 (1941).

§ **163-133. Boxes for county officers; how labeled.**—All ballots for nominations for county officers shall be deposited in the box labeled "Legislative Primary Box" hereinbefore provided for, which box, in addition to bearing the label "Legislative Primary Box," shall also immediately thereunder be labeled "County Primary Box." (1915, c. 101, s. 18; 1917, c. 218; C. S., s. 6038.)

§ **163-134. Sole candidate declared nominee.**—In all cases where only one aspirant for nomination by the party with which he affiliates for the State Senate in districts composed of only one county or for the House of Representatives of the General Assembly or for a county office shall have filed the notice of candidacy in this article required, the county board of elections shall, upon the expiration of the time fixed for filing such notice, declare him the nominee of his party, and his name shall therefore not be placed on the primary ballot, but shall be placed upon the ballot to be voted at the general election as his party's candidate for such office. (1915, c. 101, s. 19; 1917, c. 218; C. S., s. 6039.)

§ **163-135. Primaries for township and precinct officers.**—The several county boards of elections shall provide for holding in their respective counties primary elections for the choice of candidates for the nomination for township and precinct officers, which primary elections shall be held at the same time and places as the primaries for county officers: Provided, that in the counties exempt from the operation of the primary law for the nomination of county officers, township officers may also be nominated in the same manner as county officers within such counties. The expenses for holding primaries for township officers shall be paid for by the counties. (1915, c. 101, s. 20; 1917, c. 218; C. S., s. 6040; 1933, c. 165, s. 17.)

§ **163-136. Returns of precinct primaries; preservation of ballots.**—The registrar and judges of election at each precinct in the State of North Carolina shall certify upon blanks prepared and printed by the State Board of Elections and distributed through the county board of elections to the election officers of each of the several precincts the result of the primary election of each precinct; and there shall be made by the judges of election and registrar at each precinct two copies of their returns, one copy of which shall be filed by them with the clerk of the court of their county for public inspection, and one shall be filed with the county board of elections to be kept on file by it; and it shall be the duty of the judges and registrars to preserve and keep for two months after each election the original ballots cast at such election, which ballots, after being counted, shall be placed in bundles, a separate and distinct bundle to be made of the ballots of each and every political party cast in each of the boxes, and each box in which ballots were cast shall be carefully sealed up before the election officers shall separate, so that nothing put in may be taken from them, and the signatures of the registrar and judges of each precinct shall be inscribed at the same time on a seal placed on each box of the precinct, and no box shall be opened except upon the written order of the county board of elections or a proper order of court. The State Board of Elections, in preparing the printed forms for returns to be made by the judges and registrars of the several precincts to the county boards of elections, and in preparing the forms for the returns to be made by the county boards of elections to the State Board of Elections of the result of primary elections, shall prepare them in such form as will show the number of votes cast for each candidate for nomination for office. (1915, c. 101, s. 21; 1917, c. 179, s. 1; 1917, c. 218; C. S., s. 6041; 1923, c. 111, s. 15.)

Editor's Note.—Prior to the 1923 amendment the judges and the registrars were required to preserve the original ballots for four months instead of two.

Determination of Results of Primary for County Officers.—In a primary for county officers the registrar and judges of election have the sole power, acting in their ministerial capacity, to determine whether votes cast in the wrong ballot box should be counted; and they may correct their tabulation of the results thereof to the county board of elections before the latter has judicially determined the results; the duties of the latter board being continuous, under the provisions of the statute, and such powers not being functus officio until they have finally determined the results of the election. Bell v. County Board, 188 N. C. 311, 124 S. E. 311 (1924).

§ 163-137. County board tabulates results of primaries; returns in duplicate.—The county boards of elections of the several counties shall tabulate the returns made by the judges and registrars of the several precincts in their respective counties with reference to candidates in the primaries, so as to show the total number of votes cast for each candidate of each political party for each office, and, when thus compiled on blanks to be prepared and furnished by the State Board of Elections for the purpose, these returns, in the case of officers other than the State Senate in districts composed of only one county, the House of Representatives and county offices, shall be made out for each county in duplicate, and one copy shall be forwarded to the State Board of Elections and one copy shall be filed with the clerk of the superior court of the county from which such returns are made; in the case of member of the State Senate in district composed of only one county, member of the House of Representatives and county officers, such returns shall be made out in duplicate, and one copy thereof filed with the clerk of the superior court and one copy retained by the county board of elections, which shall forthwith, as to such last mentioned offices, publish and declare the results. (1915, c. 101, s. 21½; 1917, c. 218; C. S., s. 6042.)

Sufficient Declaration of Results—Request for Second Primary.—When the provisions of this section have been complied with and the result posted at the courthouse door of the county, the result of the election is sufficiently declared, and the contestant receiving the next highest vote, less than a majority, must file his written request for a second primary within five days thereafter, in accordance with the proviso of § 163-140. Johnston v. Board, 172 N. C. 162, 90 S. E. 143 (1916).

Mandamus by Candidate.—Where the county board of elections has assumed to pass upon the qualifications of the electors voting in a primary for the selection of a party candidate for a county office, and in so doing has declared certain of the electors disqualified, and has accordingly changed its returns and declared the one appearing to have received a smaller vote, the choice of the party as a candidate, an action will lie by the one appearing to have received the larger vote, against the county board, to compel them, by mandamus, to tabulate the returns made by the registrars and judges of the precinct, and then to publish and declare the same as the result of the election. Rowland v. Board, 184 N. C. 78, 113 S. E. 629 (1922).

Authority of County Board of Elections.—Under our primary law the right of a proposed elector to vote for the party's choice of a county official, in this case a register of deeds, is expressly referred to the precinct registrar and judges of election, without power of review, or otherwise, in the county board of elections, the authority of the county board extending only to supervise or to review "errors in tabulating returns or filling out blanks." Rowland v. Board, 184 N. C. 78, 113 S. E. 629 (1922).

Power to Pass on Qualification of Voters.—The primary law to select a party candidate for a county office repeals all laws inconsistent with its provisions, and by incorporating therein certain provisions of the general election law, confers no authority on the county board of electors to pass upon the qualifications of the voters of a precinct, and thereby change the result of the election from that appearing upon the face of the returns it had officially tabulated. Rowland v. Board, 184 N. C. 78, 113 S. E. 629 (1922).

§ 163-138. State Board tabulates returns and declares nominees.—The State Board of Elections shall compile and tabulate the returns for each candidate for each office for each political party voted for in the primary except in cases in which it is in this article provided that the result shall be declared by the several county boards of elections, and if a majority of the entire votes cast for all the candidates of any political party for a particular office shall be for one candidate, he shall be declared by the State Board of Elections the nominee of his political party for such office. (1915, c. 101, s. 22; 1917, c. 218; C. S., s. 6043.)

§ **163-139. Returns of election boards to be under oath.**—The chairman or secretary of each of the county boards of elections and the chairman or secretary of the State Board of Elections shall file with all returns and declarations of results of election required by law to be filed by such boards an affidavit that the same are true and correct according to the returns made to them; and a judge of election or registrar shall accompany the precinct returns as to results of primary elections with an affidavit that the same are true and correct, according to the votes cast and correctly counted by them. (1915, c. 101, s. 23; 1917, c. 218; C. S., s. 6044.)

§ **163-140. When results determined by plurality or majority; second primaries.**—In the case of all officers mentioned in this article, nominations shall be determined by a majority of the votes cast.

If in the case of an office no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for: Provided, that if either of such two shall withdraw and decline to run, and shall file notice to the effect with the appropriate board of elections, such board shall declare the other aspirant nominated: Provided further, that unless the aspirant for any legislative, county or township office receiving the second highest number of votes shall, by twelve o'clock noon on the fifth day after the result of the first primary election shall have been officially declared, and such aspirant has been notified by the chairman or secretary of the appropriate county board of elections, file in writing with the appropriate county board of elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by the county board of elections; or unless the aspirant for any district or State office, who is required by law to file with the State Board of Elections, and who receives the second highest number of votes shall, by twelve o'clock noon on the third day after the result of the first primary election shall have been officially declared, and such aspirant has been notified by the chairman or secretary of the State Board of Elections, file in writing or by telegram with the State Board of Elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by the State Board of Elections.

If a second primary be ordered by the State or a county board of elections, it shall be held four weeks after the first primary, in which case such second primary shall be held under the same laws, rules, and regulations as are provided for the first primary, except that there shall be no further registration of voters other than such as may have become legally qualified after the first primary election, and such persons may register on the day of the second primary, and shall be entitled to vote therein under the provisions of this article. If a nominee for a single office is to be selected, with more than one candidate, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all candidates by two, and any excess of the sum so ascertained shall be a majority within the meaning of this section.

If nominees for two or more offices (constituting a group) are to be selected, and there are more candidates for nomination than there are such offices, then the majority within the meaning of this section shall be ascertained by dividing the total vote cast for all of such candidates by the number of positions to be filled, and then dividing the result by two. Any excess of the sum so ascertained, shall be the majority within the meaning of this section. If in ascertaining the result in this way, it appears that more candidates have obtained this majority than there are positions to be filled, then those having the highest vote, if beyond the majority just defined, shall be declared the nominees for the positions to be filled. Where candidates for all the offices within such group do not receive a majority as defined and set out in this section, those candidates equal in number to the positions to be filled and having the highest number of votes shall be declared nominated unless a second primary shall be demanded, which may be done by any one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes. When any one or all of such candidates in the group receiving the second highest number of votes demand a second primary, such second primary shall be held and the names of all those candidates in the group receiving the highest number of votes and all those in the group receiving the second highest number of votes and demanding a second primary shall be put on the ballot for such primary. In no case shall there be a third primary, but the candidates receiving the highest number of votes in the second primary shall be nominated.

In the event of a tie vote between two candidates for party nomination for a legislative, county or township office in the first primary, a recount of the votes for both candidates shall be made by the county board of elections in the county in which the two candidates were voted for, and the results of said recount shall be declared by the county board of elections. If such recount should still result in a tie vote, then a second primary shall be had on the date prescribed for holding second primaries between the two candidates having an equal vote, unless one of the two candidates should withdraw and file a written notice of withdrawal within three days thereafter with the proper board of elections with which the candidate filed his notice of candidacy. In the event of a tie vote in a primary election between two candidates for any district or State office, or for United States Senator, no recount shall be held by reason of the tie, but the two candidates having a tie vote shall be entered in a second primary to be held on the prescribed date for second primaries, unless one of the two candidates files a notice of withdrawal with the State Board of Elections within three days after the results of the first primary have been officially declared and published. If in any second primary there is a tie vote between any two candidates, no third primary shall be held, but the proper party executive committee shall select the party nominee for such office in accordance with the provisions of G. S. 163-145.

In the event of a tie vote between more than two candidates, all of whom received the same highest vote for party nomination, no recount shall be held, but all of such candidates shall run in a second primary and the one who receives the highest vote in the second primary shall be the nominee.

In the event one candidate receives the highest number of votes cast, but short of a majority, and two or more other candidates receive the second highest number of votes cast in an equal number, then unless all but one of the tied candidates receiving the second highest number of votes withdraw in writing within three days after the official declaration of the results of the primary, the proper board of elections shall declare the candidate having the highest vote as the party nominee. If all but one of the candidates receiving the second highest vote withdraw in writing within the three-day period herein prescribed, and such remaining candidate demands in writing a second primary, then a second primary shall be held between the candidates receiving the highest vote and the remaining candidate who received the second highest vote. (1915, c. 101, s. 24; 1917, c. 179, s. 2; 1917, c. 218; C. S., s. 6045; 1927, c. 260, s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383.)

Editor's Note.—The provisions contained in the second and third paragraphs of this section were added by the 1927 amendment, except the last three sentences of the third paragraph which were added by the 1931 amendment.

The 1959 amendment added the three paragraphs at the end of this section.

The 1961 amendment rewrote the last proviso of the second paragraph.

Effect of Failure to Comply with Provisions within Required Time.—Applying the rule of construction that every part of a statute should be given effect when possible, it was held that § 24 of the State Primary Law, ch. 101, Laws of 1915, providing, among other things, that the successful candidate for certain offices, shall receive a majority of the votes cast, when construed in connection with the proviso of the same section, that the one receiving the next highest vote, under a majority, shall file a request, in writing, with the appropriate board of elections for a second primary, entitles the one receiving the highest number of votes to be the candidate of the party to the office, upon the failure of the one receiving the next highest vote to comply with the provision within the time stated, i.e., within five days after the result of the primary has been officially declared. Johnston v. Board, 172 N. C. 162, 90 S. E. 143 (1916).

Same—Mandamus.—Where a candidate for membership in the General Assembly who has received the next highest vote in a legalized primary, but less than a majority of the votes cast, has failed to comply with the proviso of this section, in giving the written notice to the board of elections for a second primary within the time prescribed, and after duly declaring the result of the election, the board then orders the second primary, the ministerial duty of recognizing the one receiving the highest vote as the candidate and putting his name on the ticket as such will be enforced by mandamus. Johnston v. Board, 172 N. C. 162, 90 S. E. 143 (1916).

The plaintiff in proceedings for mandamus to compel the county board of elections to declare him the successful candidate of his party in a primary election, or that he is entitled to a second primary to select between himself and another candidate for the same office, must show the denial of a present, clear legal right, by the failure of such board to have done so. Umstead v. Board, 192 N. C. 139, 134 S. E. 409 (1926).

In order for a candidate for the party nomination for the legislature to obtain a writ of mandamus against the county board of elections to compel the ordering of a second primary, he must show that his opponents receiving the larger number of votes have not received a majority of the votes cast for said nomination, and within five days after the result has been officially declared and he has been notified thereof, he must have filed with the county board of elections a written request that the second primary be called by it. Umstead v. Board, 192 N. C. 139, 134 S. E. 409 (1926).

§ 163-141. Attorney General to aid board by advice and as to forms.—In the preparation and distribution of ballots, poll books, forms of returns to be made by registrars and judges, and forms of the returns to be made by the county boards of elections to the State Board of Elections and to be made by the State Board of Elections, and all other forms, it shall be the duty of the State Board of Elections to call to its aid the Attorney General of the State of North Carolina, and it shall be the duty of the Attorney General to advise and aid in the preparation of all such ballots, books, and forms. (1915, c. 101, s. 25; 1917, c. 218; C. S., s. 6046.)

§ 163-142. Returns, canvasses, and other acts governed by general election law.—The returns to be made by the registrars and judges as to the results of primary elections, and the canvassing by the county boards of elections of such results and declarations of such results, and the reports to be made by the county boards of elections to the State Board of Elections and other acts and things to be done in ascertaining and declaring the results of primary elections, unless otherwise provided herein, shall be done within the time before or after the primary election, and, as near as may be, under the circumstances prescribed for like acts and things done with reference to a general election, unless such acts and things prescribed to be done within certain times under the general election law shall, with respect to primary elections, be changed by general rules promulgated by the State Board of Elections for what may seem to them a good cause. (1915, c. 101, s. 26; 1917, c. 218; C. S., s. 6047.)

§ 163-143. Election board may refer to ballot boxes to resolve doubts.—When, on account of errors in tabulating returns and filling out blanks, the result of an election in any one or more precincts cannot be accurately known, the county board of elections and the State Board of Elections shall be allowed access to the ballot boxes in such precincts to make a recount and declare the results, which shall be done under such rules as the State Board of Elections shall establish to protect the integrity of the election and the rights of the voters. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048.)

Local Modification.—Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

To the extent of any conflict between this section and § 163-86, the latter section controls. Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

Applicable in Case of Error.—This section applies only "when, on account of errors in tabulating returns or filling out blanks," the result of the election cannot be accurately known, and confers no authority on the courts, to investigate and pass upon the methods or manner in which the primary may have been conducted. Brown v. Costen, 176 N. C. 63, 96 S. E. 659 (1918).

§ 163-144. Political party defined for primary elections.—A political party within the meaning of the primary law shall mean any political group of voters which, at the last preceding general election, polled at least ten per cent of the total vote cast therein for such offices as are described in § 163-1. (1915, c. 101, s. 31; 1917, c. 218; C. S., s. 6052; 1933, c. 165, s. 17; 1949, c. 671, s. 2.)

Cross Reference.—As to definition of political party under general election law, see § 163-1.

Editor's Note.—The 1949 amendment substituted "ten per cent" for "three per cent."

The primary laws have no application to new political parties created by petition under § 163-1. By express legislative declaration, such laws apply only to existing political parties "which, at the last preceding general election, polled at least three (now ten) per cent of the total vote cast therein for" Governor, or for presidential electors. The law permits a new political party created by statutory petition to select its candidates in its own way. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 163-145. Filling vacancies among candidates.—In the event that any person nominated in any primary election, or a person who has been declared nominated without opposition after the time for filing notice of candidacy has expired, as the candidate of a political party for a State office, including the office of U. S. Senator, shall die, resign or for any reason become ineligible or disqualified before the date of the ensuing general election, the vacancy in the nomination caused thereby shall be filled by the action of the State executive committee of such political party in which the vacancy occurred; in the event of such a vacancy in the nomination of a candidate for a district office, including the office of Representative in the Congress of the United States, judge of the superior court, solicitor or State Senator in a senatorial district composed of more than one county, the same shall be filled by the action of the appropriate executive committee for such district of such political party in which the vacancy occurred; and in the event of such vacancy in the nomination of a candidate for a county office, or the State House of Representatives, or the State Senate in a district composed of only one county, and including the county entitled to furnish the senator under a rotation agreement as provided for in § 163-113, the same shall be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurred; provided that where the general election ballots have already been printed before the vacancy occurs then § 163-153 shall apply. Provided that except in case of the death of a candidate who is required by law to file his notice of candidacy with a county board of elections, no substitution of candidate may be made after the primary or convention except by order of the county board of elections for good cause shown.

In the event that any vacancy in any elective office, except a county office other than the office of clerk of superior court, should occur at any time within ten days prior to the closing of the filing time as now prescribed by law for the office in which such vacancy occurs, or after such closing of the filing time and thirty days prior to the next general election, a nomination shall be made by the proper executive committee of all political parties as above provided, and the names of the party candidates so nominated shall be printed on the official general election ballots, provided that where the general election ballots have already been printed before the vacancy occurs, then the provisions of § 163-153 shall apply; and in the event of any such vacancy arising in any elective office more than ten days prior to the closing of the filing time, as now prescribed by law, for candidates to file for the office affected, nominations of party candidates for such office shall be made in the ensuing primary election, and all candidates for said office shall file their notices of candidacy with the proper board of elections as is provided for in §§ 163-119 and 163-120; provided that in all special elections held for congressmen the provisions of § 163-105 shall apply.

In the event of a vacancy in the office of a clerk of a superior court within thirty days prior to a general election, then the nomination of a party candidate shall be made by the county executive committee. (1915, c. 101, s. 33; 1917, c. 179, s. 3; 1917, c. 218; C. S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242.)

Editor's Note.—The second and third provisos of this section were added by the 1923 amendment.

The 1955 amendment repealed the former section and substituted the present section therefor.

The 1957 amendment added the proviso to the first paragraph.

§ 163-145.1. Death of candidate prior to primary election; filling vacancy; procedure.—(a) Whenever any candidate of a political party for nomination to any office in a primary election shall die before the primary ballots have been printed, or if printed and there is sufficient time left in the opinion of the proper board of elections to reprint the ballots before the primary, and there was only one other candidate filed for the same office of the same political party, then the board of elections with whom such deceased candidate filed shall immediately upon receiving notice of the death of such candidate, reopen the filing time for filing notices of candidacy for the same office, for a period of five (5) days. The names of all candidates of the same party as that of the deceased candidate who filed for such office during the period in which the filing time was reopened and who paid the proper filing fees, shall be printed on the primary ballots along with the other one candidate for the same office who had filed the first filing period, and shall be voted for in the first regular primary election.

(b) Whenever any candidate of a political party for nomination to any office in a primary election shall die after the primary ballots for that office have been printed, and in the opinion of the proper board of elections there is not sufficient time left to reprint the ballots for that office for the primary, and regardless of whether one or more other candidates has filed for nomination to such office in the same party, then the primary ballots shall not be reprinted, and the name of the candidate who had died since the ballots were printed shall remain on the primary ballots along with all the other party candidates for nomination to said office. In the event that the highest number of votes cast in the primary were for the deceased candidate, even though short of receiving a majority of the votes cast, the proper party executive committee shall appoint the party nominee under the provisions of § 163-145 of the General Statutes of North Carolina. In the event that no candidate for such office received a majority of the votes cast in the first primary after one of the candidates had died, and the second highest vote short of a majority was cast for the deceased candidate in that primary, then it shall be considered as favoring the candidate receiving the highest vote in the first primary, and the candidate receiving the highest vote, even if short of a majority, shall be declared the party nominee to such office by the proper board of elections without a second primary being held. (1959, c. 1054.)

§ 163-146. Contests over primary results.—All contests over the results of a primary election shall be determined according to the law applicable to similar contests over the results of a general election. (1933, c. 165, s. 19.)

§ 163-147. Notice of candidacy to indicate vacancy; votes only effective for vacancy indicated.—In any primary when there are two or more vacancies for Chief Justice and Associate Justices of the Supreme Court of North Carolina or two vacancies in the United States Senate from North Carolina to be filled by nominations all candidates shall file with the State Board of Elections at the time of filing notice of candidacy a notice designating to which of said vacancies the respective candidate is asking the nomination. All votes cast for any candidate shall be effective only for the vacancy for which he has given notice of candidacy, as provided herein. (1921, c. 217; C. S., s. 6055(a); 1949, c. 932.)

Editor's Note.—The 1949 amendment made this section applicable to two vacancies for United States Senator.

Section Is Constitutional.—This section does not contravene Art. IV, § 21, of the State Constitution requiring justices to be elected in the same manner as members of the General Assembly, since the method of selection of nominees does not reach into and control the general election. Ingle v.

State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

Effect of Failure to Indicate Vacancy.—Where there are two vacancies for the office of Associate Justice of the Supreme Court to be filled at the general election, a notice of candidacy for the nomination of a party which does not specify to which of the vacancies the candidate is asking the nomination is fatally defective. Ingle v. State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

SUBCHAPTER III. GENERAL ELECTION LAWS.

Article 20.

Election Laws of 1929.

§ 163-148. Applicable to all subdivisions of State.—The provisions of this article shall be applicable to all counties, cities, towns, townships and school districts in the State of North Carolina, without regard to population or number of inhabitants thereof. (1929, c. 164, s. 2.)

Local Modification.—Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

This article is to be construed in pari materia with article 10 of this chapter. Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936); McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

Quoted in Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Cited in Harris v. Miller, 208 N. C. 746, 182 S. E. 663 (1935); State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 163-149. Preparation and distribution of ballots; definitions.—All ballots cast in general elections for national, State, county, municipal, and district officers in the towns, counties, districts, cities and other political divisions, and in primaries for the nomination of candidates for such offices, shall be printed and distributed at public expense. The printing and distribution of all ballots other than the county or local ballots hereinafter designated and the ballots for elections in cities and towns and the ballots for elections on bonds or other local measures, shall be arranged and handled by the State Board of Elections and shall be paid for by the State; and the printing and distribution of ballots in all county and local elections or primaries shall be arranged and handled by the county board of elections and shall be paid for by the respective counties; the printing and distribution of ballots in all municipal elections shall be arranged and handled by the municipal authorities conducting such election or primary and shall be paid for by such municipality. The term "State elections" as used in this article shall apply to any election held for the choice of presidential electors, United States Senators, State, county or district officer or officers. The term "national elections" shall apply to any member of Congress of the United States. The term "city election" shall apply to any municipal election so held in a city or town, and the term "city officers" shall apply to any person to be chosen by the qualified voters at such an election. (1929, c. 164, s. 3.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936).

§ 163-150. Applicable to all issues submitted to people; form of ballot.—This article shall apply to and control all elections for the issuance of bonds and to all other elections in which any question or issue is submitted to a vote of the people. And the form of ballot in such elections shall be a statement of the question, with provisions to be answered "Yes" or "No" or "For" or "Against" as the case may be. (1929, c. 164, s. 4.)

This section is to be construed in pari material with § 153-96. Both sections relate to the same subject matter, and as there is no material conflict between them, they are now in full force and effect. Parker v. Anson County, 237 N. C. 78, 74 S. E. (2d) 338 (1953).

Ballot for School Bond Election Held Sufficient.—See annotation under § 153-96.

§ 163-151. Ballots; provisions as to; names of candidates and issue.—The ballots printed for use under the provisions of this article shall be printed and delivered to the county boards of elections at least thirty days previous to the date of election, and shall contain the names of all candidates who have been put in nomination by any primary, convention, mass meeting, or other assembly of any political party in this State, or have duly filed notice of their independent candidacy, and all questions or issues to be voted on. It shall be the duty of the county board of elections to have printed all necessary ballots for use under the provisions of this article for county, township, and district elections. It shall be the duty of the State Board of Elections to have printed all necessary ballots for use under the provisions hereof for State and national elections, constitutional amendments and propositions submitted to the vote of the people: Provided, that in printing the names of candidates on all primary and general election ballots, only the legal name of the candidate as same appears on the notice of candidacy forms shall appear on the ballots, and no appendage such as doctor, reverend, judge, etc., may be used either before or following the name of any candidate, except that a married woman may use the prefix "Mrs." or a single woman may use the prefix "Miss" before her name if she elects so to do. Provided, that a candidate may use a nickname, by which he has been commonly known in the election district, together with his legal name which shall appear on the ballots in the primary and general election in the same form as the name appears on the notice of candidacy. The nickname of any candidate placed on the ballot for any primary or general election shall appear immediately before the surname of such candidate and shall be enclosed by parenthesis. No title or appellation indicating rank, status, or position, such as, but not limited to, doctor, major, professor, director, or president, shall be placed on any ballot as the nickname of a candidate. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934.)

Editor's Note.—The 1945 amendment added the first proviso.

The 1957 amendment rewrote the first proviso.

The 1963 amendment added the last proviso and the last two sentences.

Ballots Assured in Every County.—The language of this section is sufficiently broad to assure official printed ballots in each and every county. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

The right of a candidate to have his name printed on the official ballot under this section is dependent upon his becoming a nominee in the required manner. McLean v. Durham County Board, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

Cited in States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

§ 163-152. Independent candidates put upon ballot, upon petition.—The boards of election shall cause to be printed upon said ballots as an independent or non-partisan candidate, the name of any qualified voter who has been requested to be a candidate for office by written petition signed by at least twenty-five per cent of those entitled to vote for a candidate for such office according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for, when such petition is accompanied by an affidavit from such proposed candidate that he seeks to become an independent or non-partisan candidate and does not affiliate with any political party: Provided, such petition is filed with said board of elections at or before the time prescribed by law for the nomination of candidates by the political parties within the particular political division. The written petition provided herein, in municipal elections shall be signed by at least twenty-five per cent of the votes cast for the candidate running, in the last municipal election, for the particular office. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236.)

Editor's Note.—The 1931 amendment added the last sentence to this section. The amendment, badly worded, apparently means that in municipal elections, the number who must sign the petition must be equal to ten per cent (now twenty-five per cent) of the votes cast for the successful candidate for that office in the last municipal election. 9 N. C. Law Rev. 373.

The 1935 amendment substituted "twenty-five per cent" for "ten per cent" in the first and last sentences.

§ 163-153. Becoming candidate after the official ballots have been printed; provision as to the ballots.—If any candidate dies or resigns, or otherwise become disqualified after his name has been printed on an official election ballot, and if any person is nominated, as authorized by law, to fill such vacancy, then the name of the candidate so nominated to fill said vacancy shall not be printed upon said ballots, but the name of such candidate so nominated shall be certified by the party executive committee making the nomination to the chairman of the board of elections charged with the duty of printing such ballots, and a vote cast by a voter for the name of the candidate printed on the ballot who has either died or resigned, shall be counted as a vote for the candidate nominated to fill such vacancy and whose name is on file with said board of elections. After the official ballots have been printed by the proper election board the death or resignation of a candidate whose name is printed on the official ballot, shall not cause the said board of elections to reprint the official ballots: Provided, that the board of elections having jurisdiction over the printing and distribution of the ballots concerned may cause said ballots to be reprinted and be substituted in all respects for the first printed ballots if, in its judgment, such substitution is feasible and advisable. (1929, c. 164, s. 7; 1931, c. 254, s. 1; 1947, c. 505, s. 8.)

Editor's Note.—The 1947 amendment rewrote this section as changed by the 1931 amendment.

§ **163-154. Withdrawal of candidate.**—After the proper officer has been notified of the nomination, as hereinbefore specified, of any candidate for any office, he shall not withdraw same unless upon the written request of the candidate so nominated, made at least thirty days before the day of the election. (1929, c. 164, s. 8.)

§ **163-155. Number of ballots; what ballots shall contain; arrangement.**—There shall be seven kinds of ballots, called respectively: official ballot for presidential electors; official ballot for United States Senator; official ballot for members of Congress; official State ballot; official county ballot; official township ballot; and official ballot on constitutional amendments or other proposition submitted. In addition to these, there shall be a definite form of ballot for primary elections as hereinafter provided and a ballot for municipal elections as hereinafter provided: Provided, further, that the State Board of Elections, or the county board of elections may, in their discretion, combine any one or more of the ballots for either the primary or the general election. The ballots herein provided for shall be used for the purpose for which their names severally indicate, and not otherwise, that is to say:

(1) On the official presidential ballot, the names of candidates for electors of President and Vice-President of the United States of any political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party, shall not be placed on the ballot, but shall after nomination be filed with the Secretary of State. In place of their names, there shall be printed first on the ballot the names of the candidates for President and Vice-President of the United States, respectively, of each such political party or group of petitioners, who have qualified under the provisions of § 163-1 of the General Statutes of North Carolina as a political party, and they shall be arranged under the title of the offices. The party columns shall be separated by black ink lines. At the head of each party column shall be printed the party name in large type and below this a circle one-half inch in diameter, below this the names of the candidates for President and Vice-President in the order prescribed. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle."

If the State Board of Elections, in its discretion, should combine the presidential ballot with some other kind of ballots, such as the State, senatorial, or congressional ballots, then in that event, there shall be printed at the left of the names of such candidates for President and

Vice-President of each party or group, a single voting square large enough so that a voter, desiring to vote for candidates for other officers of another party, may vote for the candidates for President and Vice-President together in the one single square. When the presidential ballot is combined with another ballot, instruction number two on the State ballot shall be included with the instructions given herein for the presidential ballot.

On the face of the ballot, at the top, shall be printed in heavy black type the following instructions:

a. To vote a straight ticket, make a cross (X) mark in the circle of the party you desire to vote for.

b. A vote for the names of candidates for President and Vice-President is a vote for the electors of that party, the names of whom are on file with the Secretary of State.

c. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

....

Facsimile of signature of chairman of State Board of Elections.

(2) On the official ballot for United States Senator the names of the nominees or candidates for United States Senator, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the State Board of Elections, as to all ballots herein required to be printed and distributed by such State Board of Elections, and by the county board of elections with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

a. To vote a straight ticket, make a cross (X) mark in the circle of the party you desire to vote for.

b. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

....

Facsimile of signature of chairman of State Board of Elections.

(3) On the official ballot for members of Congress, the names of the nominees or candidates for members of Congress, of each party, and of each independent candidate, if any, shall be printed and so arranged in columns as to show above such names the party with which all such nominees or candidates are affiliated. At the head of each party column shall be printed the party name in large type, and below this a circle one-half inch in diameter, and below this the names of the respective nominees, or independent candidates, if any. At the left of each name shall be printed a voting square, and all voting squares shall be arranged in

the same perpendicular line. Each party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket mark within this circle." The column for any independent candidate or candidates shall be similar to the party columns, except that at the top of said column there shall be printed the words "independent candidates." The columns shall be arranged upon the ballots as directed by the State Board of Elections, as to all ballots herein required to be printed and distributed by such State Board of Elections, and by the county board of elections, with respect to all ballots required to be printed and distributed by the county board of elections. On the face of the ballot, at the top, shall be printed in heavy type the following instructions:

a. To vote a straight ticket, make a cross (X) mark in the circle of the party you desire to vote for.

b. If you tear or deface or wrongly mark this ballot, return it and get another.

On the bottom of the ballot shall be printed the following:

....

Facsimile of signature of chairman of State Board of Elections.

(4) On the official State ballot shall be printed the names of all candidates for State public offices, including candidates for judges of the superior court, and all other candidates for State offices not otherwise provided for. The names of all such State candidates to go upon the said official ballot which is herein provided, of each party and group of independent candidates, if any, shall be printed in one column and the party column shall be parallel and shall be separated by distinct black lines. At the head of each party column shall be printed the party name and under this shall be a blank circle one-half of an inch in diameter, which party circle shall be surrounded by the following instructions plainly printed: "For a straight ticket, mark within this circle." The columns for the independent candidates shall be similar to the party columns, except that above each column shall be printed the words "independent candidate." In each party column the names of all nominees of that party shall be printed in the customary order of the office, and the names of all candidates of each party for any one office shall be printed in a separate section, and at the top of each section shall be printed on one line the title of the office and a direction as to the number of candidates for whom a vote may be cast, unless there shall not be room for the direction, in which case it shall be printed directly below the title. If two or more candidates are nominated for the same office for different terms the term for which each is nominated shall be printed as a part of the title for the office. Each section shall be blocked in by black lines and the voting squares shall be set in a perpendicular column or columns to the left of each candidate's name. The printing on said ballot shall be plain and legible, and in no case shall it exceed in size ten-point type.

On the face of the ballot, at the top shall be printed in heavy type, the following instructions:

a. To vote a straight party ticket, make a cross (X) mark in the circle of the party you desire to vote for.

b. To vote a split ticket, or in other words for candidates of different parties, omit making a cross (X) mark in the party circle at the top of the ballot and mark in the voting square opposite the name of each candidate on the ballot for whom you wish to vote.

c. If you should mark in the party circle at the top of the ballot and also mark opposite the name of any candidate of any party, such ballot shall be counted as a straight party vote for all of the candidates of the party whose name the cross (X) mark is placed in the party circle.

On the bottom of the ballot shall be printed the following:

....

Facsimile of signature of chairman of State Board of Elections.

The instructions hereby given for the State ballot shall be used when there are two or more State offices to be filled at an election, or when two or more kinds of ballots as herein given are printed on one ballot.

(5) On the official county ballot shall be printed the names of all candidates for solicitor for the judicial district in which the county is situated; for member of the General Assembly, and all county offices. It shall conform as nearly as possible to the rules prescribed for printing the State official ballot, but on the bottom thereof shall be printed the following:

....

Facsimile of signature of chairman of county board of elections.

(6) The township ballot shall contain the names of the candidates for constable and justices of the peace, and the municipal ballot shall contain the names of all offices to be filled in the municipality at the election for which the ballot is to be used, and shall conform as near as may be to the provisions herein set out with respect to the county ballot.

(7) On the official ballot on constitutional amendments or other propositions submitted shall be printed each amendment or proposition submitted in the form laid down by the legislature, county commission, convention, or other body submitting such amendment or proposition. Each amendment or proposition shall be printed in a separate section and the section shall be numbered consecutively, if there be more than one. The form of the constitutional amendment or referendum ballot shall be prepared by the State Board of Elections and approved by the Attorney General of North Carolina.

(8) In primary elections there shall be no provision for designating the choice of a party ticket by one act or mark, but there shall be a separate ballot for each party and of different colors. The ballots containing the names of the respective candidates shall be so printed that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the said ballots shall be distributed impartially and without discrimination. A square shall be to the left of the name of each candidate in which the voter may make a cross (X) mark indicating his choice for each candidate. On the bottom of each ballot in such primary election printed by the State Board of Elections shall be printed the following:

....

Facsimile of signature of chairman of State Board of Elections.

And on the bottom of each ballot printed by the county board of elections shall be printed the following:

....

Facsimile of signature of chairman of county board of elections.

(9) In all city or municipal elections and primaries there shall be an official ballot on which shall be printed the names of all candidates for city or town offices. It shall conform as nearly as possible to the rules prescribed for the printing of the official general ballot, but on the bottom thereof shall be printed the following:

....

Facsimile of signature of city clerk.

(1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2; 1955, c. 812, s. 1.)

Editor's Note.—This section was changed in several particulars by the 1931 amendment. The provision as to combining ballots was inserted in the first paragraph, and changes were made as to the instructions, etc., to be printed on the ballots.

The 1939 amendment changed instruction b under subdivision (4).

The 1947 amendment rewrote subdivision (7) and the 1949 amendment inserted in the first paragraph of subdivision (1) the clause as to having qualified as a political party under § 163-1.

The 1955 amendment made changes in instructions a and b of subdivision (4).

§ **163-156. Ballots for each precinct wrapped separately.**—All ballots for use in each precinct shall be wrapped in packages, each package to contain whatever number of ballots the chairman of the county board of elections may deem advisable for the respective precincts in his own county, but each package shall have written or stamped thereon the number of ballots contained therein so the registrar will know how many ballots to account for in his precinct. (1929, c. 164, s. 10; 1933, c. 165, s. 22.)

§ **163-157. Number of ballots to be furnished polling places.**—There shall be provided for each voting place at which an election or primary is to be held such a number of ballots that there shall be at least one hundred and five ballots for every one hundred registered voters at each polling place, or an excess of ballots of five per cent over the registration at each precinct. (1929, c. 164, s. 11; 1933, c. 165, s. 22; 1951, c. 849, ss. 1, 2.)

Editor's Note.—The 1951 amendment changed this section so as to require five per cent instead of twenty-five per cent of excess ballots over the total registration.

§ **163-158. Ballot boxes.**—The county board of elections shall provide for each precinct ballot boxes for official ballots, as herein specified, which boxes shall respectively be plainly marked "Presidential Electors," "Ballot Box Members of Congress," "Ballot Box United States Senator," "Official State Ballot Box," "Official County Ballot Box," "Official Township Ballot Box," and "Official Propositions Ballot Box," and also one additional box for spoiled ballots, to be plainly marked "For Spoiled Ballots." Each box shall be supplied with a lock and key and with an opening in the top large enough to allow a single folded ballot to be easily passed through, but no larger. (1929, c. 164, s. 12; 1931, c. 254, s. 11.)

Editor's Note.—The 1931 amendment deleted a provision as to providing a box for ballot stubs.

§ **163-159. Sample ballots.**—The State Board of Elections shall prepare sample ballots of each kind of ballot printed by the State for the purpose of instructing voters in marking their ballots, which sample ballots shall be printed on colored paper and with the words "Sample Ballots" printed conspicuously thereon and shall distribute the same to the county boards of elections. The county boards of elections shall likewise print on colored paper and distribute county and township sample ballots for instructing said voters. (1929, c. 164, s. 13; 1931, c. 254, s. 12.)

Editor's Note.—The 1931 amendment rewrote this section.

§ **163-160. Distribution of ballots and boxes.**—The county board of elections shall deliver to the registrar in each precinct the proper number of ballots and boxes, as required by the provisions of this article, three days before the day of election, and shall obtain from each registrar a receipt for same. (1929, c. 164, s. 14.)

§ **163-161. Destroyed or stolen ballots; how replaced; reports as to.**—In case the ballots furnished to any precinct in accordance with the provisions of this article shall be destroyed or stolen, it shall be the duty of the county board of elections to cause other ballots to be prepared in the form of the ballots so wanting. Within three days after the close of the polls on election days, the registrars having lost such ballots shall make a written report of the whole circumstances of the loss of the ballots, under oath, to the county board of elections. (1929, c. 164, s. 15.)

§ 163-162. Duties and compensation of registrars; bystander sworn in on failure of registrar or judge to serve.—In addition to the compensation for performance of the duties required in the registration of voters, each registrar shall receive for his services on election day the sum of five dollars. If any registrar or judge of election fails or refuses to serve as herein provided, the officer holding the election shall swear in a bystander of the same political faith as the registrar not serving, and if none such be present then any other qualified elector. The bystander sworn in to act as registrar or judge shall receive the same compensation as the registrar is entitled to. One of the judges appointed for such purpose by the precinct election officers shall have charge of the ballots and furnish them to the voters in manner hereinafter set forth. The registrar shall promptly, at the close of the registration period, certify to the county board of elections the number of voters registered in his precinct. (1929, c. 164, s. 16; 1939, c. 264.)

§ 163-163. Voting booths; arrangement and number of; provisions as to.—The county board of elections in each county whose duty it is to hold the election and appoint polling places therein, as herein provided for, shall cause the same to be suitably provided with a sufficient number of voting booths, equipped with the tables or shelves on which voters may conveniently mark their ballots. Each voting booth shall be at least three feet square and six feet high and shall contain three sides and have a door or curtain in front, which door or curtain shall extend within two feet of the floor; and each booth shall be so arranged that it shall be impossible for one voter in one voting booth to see another voter at another voting booth in the act of marking his ballot. The arrangement shall be such that the ballot boxes and voting booths shall be in plain view of the judges of election. The number of such voting booths shall be not less than one for each hundred voters qualified to vote at such polling places. Each voting booth shall be kept properly lighted and provided with proper supplies and conveniences for marking ballots. The county board of elections may provide buildings by lease or otherwise in which the elections are to be conducted, or they may cause a space not more than one hundred feet from the ballot box to be roped off, in which space no person shall be allowed to enter except through a way not exceeding three feet in width for the entrance and exit of voters. They may prescribe the manner in which the place for holding elections shall be prepared in every precinct so as to properly effectuate the purpose of this article. The county board of elections shall also be entitled to demand and use any school or other public building for the purpose of holding any election and require that such building be vacated for such purpose. (1929, c. 164, s. 17.)

§ 163-163.1. Consolidation of precincts, etc., for district voting in certain counties.—In counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2, the county board of elections shall have the authority by a resolution passed by a majority vote to consolidate two or more precincts, wards, or election districts within a township for the sole purpose of district voting, to the end that voters in the two or more precincts, wards, or election districts, so consolidated for district voting, may vote together in the same polling place, provided that any such consolidation for district voting within a township shall be wholly within or wholly without any corporate municipality within such township. Upon the passage of a resolution consolidating two or more precincts, wards or election districts into a voting district, notice thereof shall be posted at the courthouse and the same shall be published in a newspaper of general circulation of said county at least 20 days prior to the election in which said district voting will be used. Such notice shall give the names, numbers, or other designations of the precincts, wards, or election districts, so consolidated for district voting, and shall likewise describe the location of the consolidated district voting place. Whenever two or more precincts, wards, or election districts within a township are consolidated for district voting, the county board of elections shall have the authority to consolidate the registration books for all of the precincts, wards, or election districts included in the district voting, to the end that the names of electors in the consolidated registration for said precincts, wards, or election districts shall be in alphabetical order for the consolidated voting rather than in separate books or volumes by precinct, ward, or election district. In all instances of district voting hereunder the registrars for all of the precincts, wards, or election districts included in said voting district, together with all of the judges of election therein, shall constitute a joint board of precinct, ward, or election district election officials, and shall hear and determine all matters usually heard by the registrar and judges of election of a precinct, ward, or election district, except that challenges or objections to the name of any person offering to vote on the day of any primary or general election as provided for in G. S. 163-79 shall be heard and determined by the registrar and judges of election appointed for the precinct, ward, or election district in which such elector is registered. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1.)

Editor's Note.—The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing near the beginning of the section.

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-164. Regulations for opening polls; oath of judges and registrars.—The judges of election and registrars of each precinct shall meet at the polling places therein at least one-half hour before the time set for opening polls for each election referred to in this article, and shall proceed to arrange the space within the enclosures set apart for election, and to prepare the booths for the orderly and legal conduct of the election. They shall then and there have the official ballot boxes, herein referred to, together with the boxes for ballot stubs and the boxes for spoiled ballots as hereinbefore provided, the sealed packages of official ballots, the registration book, the polling book, and the required supplies.

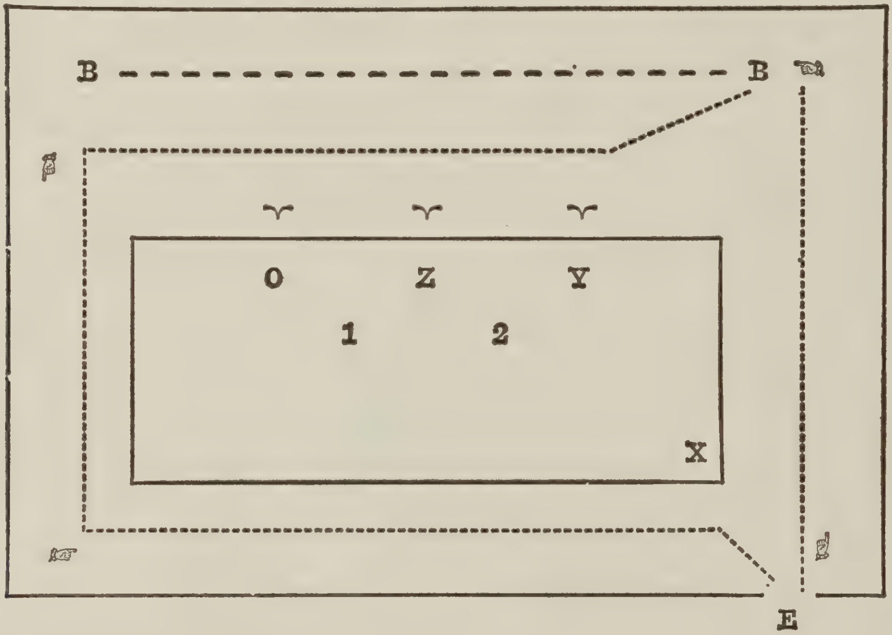
They shall see that the voting booths are supplied with pencils, or pen and ink; unlock the official ballot boxes; see that the same are empty; allow the authorized watchers present and any other electors who may be present to examine said boxes, and shall lock the same again while empty. After such official ballot boxes are relocked they shall not be unlocked or opened until the closing of the polls, and except as authorized by law no ballot or other matter shall be placed in such boxes. Each judge of election and registrar shall before the opening of the polls take the following oath:

"I do solemnly swear that I will administer the duties of my office without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition, and that I will not keep or make any memorandum of anything occurring within the voting booths, except I be called upon to testify in a judicial proceeding for a violation of the election laws of this State: so help me God."

This oath shall be administered at the time hereinbefore prescribed by the registrar to the two judges of election and by one of them to the registrar. The same oath shall be taken before the registrar or judge by every person rendering assistance. They shall then open the sealed package of ballots, and one of the judges shall make proclamation that the polls are open and of the time when they will be closed. From the time of opening of the polls until the announcement of the result of the canvass of the votes after the close of the polls and the signing of the official returns the official ballot boxes and the other boxes herein provided for and all the official ballots herein provided for shall be kept within the precinct election enclosures. (1929, c. 164, s. 18.)

§ 163-165. No loitering or electioneering allowed within 50 feet of polls; regulations for voting at polling places; banners or placards; guard-rail; diagram.—No person shall, while the polls are open at polling places, loiter about or do any electioneering within such polling place or within fifty feet thereof, and no political banner, poster, or placard shall be allowed in or upon such polling places during the day of the election. The election officials and ballot boxes shall at all times be in plain view of the qualified voters who are present, and a guard-rail shall be placed not nearer than ten feet nor further than twenty feet from the said election officials and ballot boxes.

The arrangement of the polling place shall be substantially according to the following diagram, and shall conform as nearly thereto as the building or other place in which said election is held will permit:



E. Entrance to voting place.
X. Judge with ballots and box for spoiled ballots.
B. Voting booths.
Y. Polls book.
Z. Ballot box.
O. Box for stubs.
1, 2. Other election officials.
- - - - - Direction of entry and exit of voter.
(1929, c. 164, s. 19.)

§ 163-166. Delivery of ballot to voter; testing registration.—The voter shall enter through the entrance provided, and shall forthwith give to the judge of election his name and residence. One of the judges shall thereupon announce the name and residence of the voter in distinct tone of voice. The registrar shall at once announce whether the name of such voter is duly registered. If he be registered, and be not challenged, or if he be challenged and the challenge decided in his favor, or if he take the requisite oath and be lawfully entitled to vote, the proper judge of election shall prepare for him one official ballot of each kind, folded by such judge in the proper manner for voting, which is: first, bring the bottom of the ballot up to the margin of the printing at the top of the ballot, allowing the margin to overlap;

and second, fold both sides of the center, so that when folded the face of the ballot, except the one inch margin at the top thereof, shall be concealed, and so that the ballot shall be not more than four inches wide. Such judge shall then instruct the voter to refold the ballot in the same creases when he has marked it. Provided, that when a county board of elections adopts for use in a county a type of ballot box, as approved by the State Board of Elections, into which only unfolded ballots can be deposited, then the requirement above that the ballots shall be folded before being delivered to a voter and deposited in the ballot box shall not be complied with. (1929, c. 164, s. 20; 1931, c. 254, s. 13; 1955, c. 767.)

Editor's Note.—The 1931 amendment deleted the former last two sentences of this section which read as follows: "Such judge shall then with pen and ink mark upon the top margin of the face thereof the number of the voter upon the polling list and the initials of such judge's name, and shall thereupon deliver the ballot or ballots to the voter. No person other than such designated judge shall deliver to any voter any ballot."

The 1955 amendment added the last sentence.

§ **163-167. Marking ballots by voter.**—The voter shall then go to one of the voting booths and shall therein prepare his ballot by marking in the appropriate margin or place a cross (X) mark opposite the name of the candidate or party of his choice for each office to be filled, or by filling the name of the candidate of his choice in the blank space provided therefor. The voter may designate choice of candidate by a cross (X) or by a check mark, or other clear indicative mark. (1929, c. 164, s. 21; 1959, c. 1203, s. 8.)

Editor's Note.—The 1959 amendment deleted from the end of the first sentence "and marking a cross (X) opposite thereto."

§ **163-168. Depositing of ballots, signature of voter if challenged; delivery of poll books to chairman of county board of elections.**—When the voter has prepared his ballot or ballots, same shall be deposited in the proper boxes: Provided, however, that if the voter shall have been challenged and the challenge be decided in the voter's favor, before depositing the ballot or ballots in the proper boxes, the voter shall write his name on the ballot or ballots for identification in the event that any action should be taken later in regard to the voter's right to vote. After voting, the voter shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain for purposes other than voting. No ballots except official ballots bearing the official endorsement shall be allowed to be deposited in the ballot boxes or to be counted. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots. When a person shall have received an official ballot from the judge, he shall be deemed to have begun the act of voting, and if he leaves the guard-rail before the deposit of his ballot in the box he shall not be entitled to pass again within the guard-rail for the purpose of voting.

The poll books required to be kept by the judges of elections shall be signed by the judge at the close of the election, and delivered to the registrar, who shall deliver them to the chairman of the county board of elections. (1929, c. 164, s. 22; 1931, c. 254, s. 14; 1939, c. 263, s. 3½; 1953, c. 1040.)

Editor's Note.—The 1931 amendment rewrote this section.

The 1933 amendment substituted "chairman of the county board of elections" for "clerk of the superior court" at the end of the section.

The 1953 amendment rewrote this section, omitting therefrom the former provision as to folding of ballots.

Inquiry as to Voter's Qualifications Rests with Election Officials.—The law does not contemplate that a watcher or any other person may take charge when he challenges a voter at the polls and conduct a hearing with respect to the voter's right to vote. The inquiry with respect to the voter's qualifications to vote rests with the election officials. Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1906).

§ **163-169. Manner and time of voting.**—On receiving his ballot the voter shall forthwith, and without leaving the enclosed space, retire alone, unless he be one that is entitled to assistance as hereinafter provided, to one of the voting booths, and without undue delay unfold and mark his ballots. No voter shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and voters are waiting. It shall be unlawful purposely to deface or tear an official ballot in any manner, or to erase any name or mark written thereon by a voter. If a voter wrongly mark or deface or tear a ballot he may obtain others successively one at a time, but not more than three of any one kind, upon returning to the judge each ballot so spoiled. (1929, c. 164, s. 23.)

§ 163-170. Who allowed in room or enclosure; peace officers.—No person other than voters in the act of voting shall be allowed in the room or enclosure in which said ballot box and booths are, except the officers of election and official markers as hereinafter provided, and official watchers. In case of cities having duly enrolled policemen or peace officers, the city authorities may designate the officers to keep the peace at the polls on the outside of the enclosure in which is the ballot box. But in no event shall said policemen or peace officers come nearer to said entrance than ten feet, or enter the room or enclosure in which is the ballot box, unless specially requested to do so by the officers holding the elections, and then only for the purpose of preventing disorder; and at any time when requested to do so by said officers holding the elections, the said policemen shall retire from the room or enclosure in which is the ballot box, and to a point not nearer than ten feet to the aforesaid entrance. (1929, c. 164, s. 24; 1955, c. 871, s. 7.)

Local Modification.—Cumberland: 1937; c. 426.

Editor's Note.—The 1955 amendment added "and official watchers" at the end of the first sentence.

§ 163-171. Ballots not taken from polls; other ballots for spoiled ballots; delivery to county board of elections.—No person shall take or remove any ballots from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one to the registrar, and the registrar shall deposit said spoiled ballot in the box kept for the purpose by him. Within three days after each election or primary the registrar of each precinct shall deliver to the county board of elections in an envelope to be furnished by the county board of elections for such purpose the spoiled ballots so deposited at such precinct, and shall at the same time in another envelope furnished for such purpose, deliver to the said county board of elections the unused ballots from said precinct. The county board of elections shall thereupon make a check to ascertain whether the total of such spoiled ballots and such unused ballots when added to the number of ballots cast at such precinct shall equal the total number of ballots furnished to the registrar of such precinct prior to such election or primary. (1929, c. 164, s. 25.)

§ 163-172. Assistance to voters in election; counties excepted.—Prior to the date of any election hereunder the county board of elections, together with the registrar of each precinct of each county, shall designate for each precinct therein a sufficient number of persons of good moral character and of the requisite educational qualifications, who shall be bona fide electors of the precinct for which they are appointed, to act as markers, whose duty it shall be to assist voters in the preparation of their ballots. Elected officers and candidates for elective offices shall be ineligible to serve as markers, but all other governmental employees shall be eligible to serve as markers. The assistants or markers so appointed by the said county board of elections shall be so appointed as to give fair representation to each political party whose candidates appear upon the ballot. The chairman of the county organization of any political party may, not more than ten days before any election to be held, hereunder, submit to the county board of elections the names of not less than ten qualified voters in any voting precinct of the county, and thereupon the marker or markers appointed to represent such party in said election at said voting precinct shall be selected from among those so named. Such persons shall remain within the enclosure prepared for the holding of elections, but shall not come within ten feet of the guard-rail, except when going to or returning from the booth with any elector who has requested assistance. Such marker or assistant shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way, and shall not make or keep any memorandum of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person how in any particular such voter marked his ballot, unless he, or they, be called upon to testify in a judicial proceeding for a violation of the election laws. Every such marker or assistant, together with the registrar and judge of election, shall, before the opening of the polls, take and subscribe an oath that he will not, in any manner, seek to persuade or induce any voter to vote for or against any particular candidate, or for or against any particular proposition, and that he will not make or keep any memorandum of anything occurring within the booth, and will not disclose the same, unless he be called upon to testify in a judicial proceeding for a violation of the election laws of this State. The said oath, after first being taken by the registrar, may be administered by him to the two judges of election and to the markers or assistants, as herein provided: Provided, that in all general elections held under the provisions of this article any voter may select another member of his or her family who shall have the right to accompany such voter into the voting booth and assist in the preparation of the ballot, but immediately after rendering such assistance the person so assisting shall vacate the booth and withdraw from the voting arena. This section is not applicable to primary elections.

Provided that this section shall not apply to counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2. (1929, c. 164, s. 26; 1933, c. 165, s. 24; 1939, c. 352, s. 1; 1953, c. 843; 1955, c. 800; 1959, c. 616, s. 1; 1963, c. 303, s. 1.)

Local Modification.—Brunswick: 1963, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Editor's Note.—The 1939 amendment repealed this and § 163-173 insofar as such sections apply to primaries and in lieu thereof enacted § 163-174.

The 1953 amendment added the second paragraph. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the first and second lines of said paragraph. The 1959 amendment inserted the second sentence of the first paragraph.

The 1963 amendment deleted the words inserted by the 1955 amendment.

Acts Violative of Section.—It is a violation of this section for a judge of elections to mark the ballots for voters without any request for assistance by the voters, or, in the event of a request for assistance, to fail to return the marked ballot to the voter in order that the voter may see how it was marked before putting it in the ballot box. Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 163-173. Aid to persons suffering from physical disability or illiteracy; counties excepted.—Any person who, on account of physical disability, is obviously unable to enter the booth without assistance, or who on account of such disability, or because of illiteracy, or for any other good reason, shall request assistance from the registrar or judges of election, may, upon such declaration and upon his own request, have assistance from any one of the markers or assistants provided for in § 163-172. The voter may indicate which of the markers he desires to assist him; whereupon the registrar shall direct that the marker or assistant so indicated by the voter accompany said voter into the booth and give him such aid as may be requested in the preparation of his ballot, whereupon said marker or assistant shall withdraw from said booth and to his place within the rail, and shall not accompany the voter to the ballot box unless assistance be required on account of physical infirmity and such assistance is requested by the voter, or have any further conversation with said voter prior to the time that he deposits his ballot. In the event the voter does not request the assistance of any particular marker or assistant, then the registrar shall appoint from among the official markers or assistants some person to aid the voter in preparing his ballot. This section is not applicable to primary elections.

Provided that the right to request assistance from any one of the markers shall not apply to counties in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163-43, with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2: Provided, however, that in counties covered by this paragraph the provisions of G. S. 163-174 shall apply also to general elections. (1929, c. 164, s. 27; 1939, c. 352, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 6; 1963, c. 303, s. 1.)

Local Modification.—Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Editor's Note.—See note to § 163-172.

The 1953 amendment added the second paragraph in the section. The 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the second paragraph. The 1957 amendment added the second proviso to the second paragraph. The 1963 amendment deleted the words inserted by the 1955 amendment.

§ **163-174. Assistance to illiterate or disabled voter in primary.**—Any qualified voter entitled to vote in any primary, but who by reason of any physical disability or illiteracy is unable to mark his ballot may upon statement to the registrar of his incapacity and upon his request be aided by a near relative (husband or wife, brother or sister, parent or child, grandparent or grandchild), who shall be admitted to the booth with such voter, or if no near relative is present such voter may call to his assistance any other voter of his precinct who has not given aid to another voter, and who shall likewise be admitted to the booth with such voter: Provided, that if the voter needs and is entitled to the assistance as herein provided for, and there is no near relative present, or anyone else authorized hereunder to give assistance, the voter may call to his assistance the registrar or one of the judges of the election: Provided, further, that any voter may upon his request be accompanied into the voting booth by a near relative (as above defined), and obtain such assistance from said member of the family as he may desire whether disabled or not. It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary to any voter otherwise than as is herein provided for. (1939, c. 352, s. 2.)

Local Modification.—Cumberland, Wilson: 1939, c. 402.

§ **163-175. Method of marking ballots; improperly marked ballots; when not counted.**—The voter shall observe the following rules in marking his ballot:

(1) If the elector desires to vote a straight ticket, or in other words, for each and every candidate of one party for whatever office nominated, he shall, either:

  a. Make a cross mark in the circular space below the name of the party at the head of the ticket; or

  b. Make a cross mark on the left of and opposite the name of each and every candidate of such party in the blank space provided therefor.

  c. A voter who makes a cross mark (X) in the party circle at the top of the ballot and then marks in the voting square opposite the names of candidates of any party on the ballot, such ballot shall not be considered as defaced but shall count only as a straight party vote for all of the candidates of that party below the name of which the cross mark (X) is placed in the party circle above. This direction shall be placed upon all ballots as a part of their arrangement, and any and all provisions or language in the law to the contrary is hereby repealed.

(2) If the elector desires to vote a split ticket, or in other words for candidates of different parties, he shall omit making a cross mark (x) in the party

circle below the name of any party and make a cross mark (x) in the voting square opposite the name of each candidate on the ballot for whom he desires to vote on whatever party ticket he may be.

(3) If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in with a pencil or ink in the proper place. When a name is written in on the official ballot, the new name so written in is to be treated like any other name on the ballot. No sticker is to be used. Any name written in on an official ballot by any election official, or by any person other than the voter or a person rendering assistance to a voter pursuant to §§ 163-172, 163-173 or 163-174, shall be invalid, and the name or names so written in shall not be counted.

(4) If the elector marks more names than there are persons to be elected to an office, or, if for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office but shall be returned as a blank vote for such office.

(5) If a voter shall do any act extrinsic to the ballot itself, such as enclosing any paper or other article in the folded ballot, such ballot shall be void.

[(6) Where there are group candidates for the same office printed on the ballot on any county or municipal primary held in this State, and the names of several candidates therefor appear on the ballot grouped under the office for which they are all running, the elector shall cast his or her vote for as many candidates as there are offices to be filled, and where an elector votes for any number of such group candidates less than the number of offices to be filled, such ballot shall not be counted for any of the group candidates for said offices. There shall be printed under the title of the offices for group candidates the number of candidates to be voted for.]

The subdivision in brackets shall apply only to Bladen, Catawba, Chowan, Columbus, Cumberland, Duplin, Franklin, Granville, Greene, Halifax, Hoke, Jones, Lenoir, Northampton, Onslow, Pender, Perquimans, Robeson, Sampson, Scotland, Surry and Wayne counties, and to municipal elections in the town of Gaston in Northampton County, and to municipal primary elections in the town of Williamston in Martin County, and to municipal elections in the municipalities in Franklin County, and to the general municipal elections in the town of Snow Hill in Greene County and the town of Clayton in Johnston County and the town of Fremont in Wayne County, and to elections in Bertie County and all municipalities in Bertie County.

(7) Every elector who does not vote a ballot delivered by the election officer shall, before leaving the polling place, return such ballot to such officer.

(8) A cross (X) mark shall consist of any straight line crossing any other straight line at an angle within a voting circle or square. A voter may designate his choice of candidate by the cross (X) mark or by a check mark, or any other clear indicative mark. Any ballot which is defaced or torn by the voter shall be void. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, c. 451; 1963, cc. 154, 167, 376, 389, 390, 567, 774.)

Local Modification.—City of Washington: 1959, c. 847.

Editor's Note.—The 1939 amendment added former paragraph b of subdivision (2) and made slight changes in the wording of paragraph a.

The 1947 amendment rewrote the latter part of former paragraph b of subdivision (2) and added the last sentence of subdivision (3).

This section was amended twice by Session Laws 1955. Chapter 812 added paragraph c to subdivision (1) and struck out all of former subdivision (2) and substituted the new subdivision (2) appearing above. Chapter 1104, which was made applicable in certain named counties only, rewrote subdivision (6) and attempted to strike out the following language which had appeared in old subdivision (2) before it was stricken out by chapter 812: "Provided, that where there are group candidates for similar offices the elector may select and specially mark all of such candidates for whom he wishes to vote." For clarity new subdivision (6) is set out above in brackets.

Subdivision (6) was amended six times by Session Laws 1957. Chapters 344, 589, 647 and 737 made it applicable to Chowan, Stokes, Brunswick and Greene counties, respectively. Chapter 440 made it applicable to municipal elections in the town of Gaston in Northampton County, and chapter 1383 deleted the words "or election" following the word "primary" near the beginning of the subsection.

In addition to the amendments noted above, Session Laws 1957, c. 353, provides: G. S. 163-178, as it appears in the 1955 Supplement to the General Statutes, is amended by adding at the end thereof the following: "In Davidson County the paragraph numbered '6' above shall apply to primary elections in said county." It is apparent that the reference to G. S. 163-178 is an error and that chapter 353 was intended to amend this section.

Session Laws 1959, c. 1203, deleted from the end of the first sentence of subdivision (3) the words "and making a cross (X) mark in the blank space at the left of the name so written in." Subdivision (6) was amended several times by Session Laws 1959. Chapters 604 and 888 made it applicable to Jones and Sampson counties. Chapters 105 and 610 deleted Macon and Brunswick from the list of counties to which it applies.

The 1961 amendment deleted "Stokes" from the list of counties appearing in the second paragraph of subdivision (6).

The first 1963 amendment added to the second paragraph of subdivision (6) the provision as to municipal primary elections in the town of Williamston.

The second 1963 amendment inserted "Franklin" in the list of counties in the second paragraph of subdivision (6) and also inserted in the paragraph the provision as to municipal elections in the municipalities in Franklin County.

The third 1963 amendment made subdivision (6) applicable to general municipal elections in Clayton in Johnston County.

The fourth 1963 amendment inserted the word "Granville" in the second paragraph of subdivision (6).

The fifth 1963 amendment made subdivision (6) applicable to general municipal elections in Snow Hill in Greene County.

The sixth 1963 amendment added to the second paragraph of subdivision (6) the provision as to the town of Fremont in Wayne County.

The seventh 1963 amendment added to the second paragraph of subdivision (6) the provision as to Bertie County and municipalities therein.

§ 163-176. Offenses of voters; interference with voters; penalty.—A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, or who shall take or remove, or attempt to take or remove, any ballot from the polling place or any person who shall interfere with, or attempt to interfere with any voter when inside said enclosed space, or when marking his ballot, or who shall remain longer than the specified time allowed by this article in the booth, after being notified that his time has expired, or who shall endeavor to induce any voter, while within the enclosure, before voting, to show how he marks or has marked his ballot, or aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the enclosure, in marking his ballot, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court; and election officers shall cause any person committing any of the offenses herein set forth to be arrested and shall cause charges to be preferred against the person so offending, in a court of competent jurisdiction. (1929, c. 164, s. 29.)

§ 163-177. Offenses of election officers.—Any judge of election or registrar, or other election officer, after having qualified, who willfully and knowingly refuses or fails to perform the duties herein prescribed, or who willfully and knowingly violates the provisions of this article, shall be guilty of a misdemeanor and subject to a fine, or to imprisonment in the county jail not less than ten nor more than ninety days, at the discretion of the court. (1929, c. 164, s. 30.)

§ 163-178. Reading and numbering the ballots; certificate of result; delivery of boxes to board of elections.—When the polls are closed the registrar and judge shall, in the presence of the watchers appointed by the respective executive committees of the several political parties and any other electors of the precinct who choose to be present open the box and count and record the number of the votes received by each candidate and on each question or measure. The said judge of election and registrar shall not adjourn or postpone the canvass of the vote in such precinct until it shall be fully completed. The judges of election may, at their discretion, open the ballots of absent electors immediately after the close of the polls, subject to the rights of challenge now allowed by law. A certificate setting forth the results of such election shall be signed by the registrar and judges of election. Upon the close of the counting of the ballots, as herein provided, the said election official shall replace said ballots in the official ballot box and lock the same. The ballot box shall then be delivered to such place as may be designated by the county board of elections. (1929, c. 164, s. 32.)

Cross Reference.—For act purporting to amend this section when apparently G. S. 163-175 was intended, see note to G. S. 163-175.

§ 163-179. Hours of primaries and elections.—In all primary and general elections held in this State, including all local and municipal elections, the polls shall open at six-thirty A. M. and shall close at the hour of six-thirty P. M. Eastern Standard Time. Provided, that in all voting precincts in the State where voting machines are used, the board of elections of such county may permit the polls in such precincts to close at the hour of seven-thirty P. M. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222; 1955, c. 1064.)

Editor's Note.—Prior to the 1937 amendment this section provided that in all elections the polls should be open from sunrise until sunset. The 1941 amendment changed the hours of opening and closing from 7 A. M. and 7 P. M., as provided by the 1937 amendment, to 6:30 A. M. and 6:30 P. M., respectively.

The 1955 amendment added the second sentence.

§ 163-180. Application to all primary elections; repeal of conflicting law; one-party primary officials selected from party.—The provisions of this article shall apply to any and all primary elections held in this State, or in any county thereof, as fully as it applies to general elections, as herein provided, and § 163-126 is hereby repealed, in so far as it conflicts with this article, the intent being to provide the same laws for the conduct of primaries as for general elections: Provided, further, that in any primary election held under the provisions of this article, when only one political party participates in such primary, then, all of the election officials selected for holding such primary shall be chosen only from the political party so participating. (1929, c. 164, s. 34.)

§ 163-181. Assistants at polls; when allowed and amount to be paid.—The county board of elections may appoint one clerk or assistant at any precinct in the county which has as many as five hundred qualified registered voters on the registration books in such precinct, and one additional such clerk or assistant for each additional five hundred qualified registered voters at such precinct where voting machines are used at such precinct; and where voting machines are not used, one clerk or assistant for each three hundred registered voters at a precinct. No other clerk or assistant shall be appointed for any precinct except as herein set out. Such assistants and clerks shall, in all cases, be qualified voters of the ward, or precinct, for which they are appointed, and they shall be paid the same compensation as is provided by law for the judges of election to be paid. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3.)

Editor's Note.—The 1953 amendment added that part of the first sentence beginning with "where voting machines."

§ 163-182. Watchers; challengers; counties excepted.—Each political party or independent candidate named on the ballot may, by writing signed by the county chairman of such political party, or, as the case may be, by the independent candidate or his manager, filed with one of the judges of election, appoint two watchers, who shall be qualified electors of the precinct for which they are appointed, to attend each polling place. Such watchers shall serve also as challengers: Provided, that no person shall be appointed as a watcher who is not of good moral character; and the judges of election and registrar may for good cause shown reject any appointee and require that another be appointed. Such official watchers shall have the right from the time the polls open until the polls close and the counting is completed to remain within the voting enclosure, and in a position where they may at all times during election day be in plain view of the precinct officials, the voting booths, the ballot boxes and the voting procedure, but shall not in any way impede the voting process or do any electioneering or interfere in any manner with the election except as the law provides: Provided, that any elector when the name of any elector is called by the judges of election, may exercise the right of challenging the elector's right to vote and when he or she does so then such challenger may enter the election space to make good such challenge and then retire at once when such challenge is heard.

Provided that this section shall not apply to counties in which a modern looseleaf and modern registration system has been established as permitted by G. S. 163-43 with a full time and permanent registration as authorized by G. S. 163-31 and 163-31.2. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1.)

Editor's Note.—The 1953 amendment added the last paragraph.

The first 1955 amendment inserted "one or more municipalities with a population in excess of 10,000" in lieu of "two or more municipalities, each with a population in excess of 35,000" formerly appearing in the first and second lines of the last paragraph. The second 1955 amendment rewrote the part of the third sentence appearing before the proviso thereto.

The 1959 amendment inserted after "watchers" in the first sentence "who shall be qualified electors of the precinct for which they are appointed."

The 1963 amendment deleted the words inserted by the 1955 amendment.

§ 163-183. Supervision over primaries and elections; regulations.—The State Board of Elections shall have general supervision over the primaries and elections provided for herein, and may delegate its authority to county boards appointed by it, and in case where sufficient provision may not appear to have been made herein may make such regulations and provisions as it may deem necessary: Provided, none of the same shall be in conflict with any of the provisions of this article. (1929, c. 164, s. 37.)

State Board of Elections May Make Regulations Not in Conflict with Law.—The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. It seems clear that this specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it. This is true because the Constitution forbids the legislature to delegate the power to make law to any other body. States' Rights Democratic Party v. State Board of Elections, 229 N. C. 179, 49 S. E. (2d) 379 (1948).

Cited in Strickland v. Hill, 253 N. C. 198, 116 S. E. (2d) 463 (1960).

§ 163-184. Ballots furnished absentee electors; when deemed voted before sunset; deposit in boxes.—The ballots to be furnished absentee electors under the provisions of article 10 shall be the same as the official ballots hereinbefore designated. No vote of an absent elector shall be counted unless upon the official ballot printed as prescribed in this article.

Any absentee ballots received by the registrar during the hours now fixed by law for the receipt thereof shall be deemed to be voted before sunset, and, if the convenience of the voters or officers holding the election will be promoted thereby, may in their discretion be opened and deposited in the box immediately after the closing of the polls. (1929, c. 164, s. 39.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936).

§ 163-185. Fraud in connection with absentee vote; forgery.—Any person attempting to aid and abet fraud in connection with any absentee vote cast, or to be cast, under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court. Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly. (1929, c. 164, s. 40.)

§ 163-186. Public officials violating subchapter disqualified from holding office and voting.—Any public official who knowingly and willfully violates any of the provisions of this article, and thereby aids in any way the illegal casting or attempting to cast a vote, or who shall connive to nullify any provision of this article in order that fraud may be perpetrated, shall upon conviction therefor be disqualified from holding office in the State of North Carolina, and shall be disqualified from exercising the right of franchise, as now provided in case of conviction for felony. (1929, c. 164, s. 41.)

§ 163-187. Definitions as applied to municipal primaries and elections.—With respect to all municipal primaries and elections, wherever in this article appear the words "county board of elections" shall be deemed to be written the words "city or town governing body;" and wherever appear the words "chairman of board of elections" shall be deemed to be written the words "mayor of town or city." (1929, c. 164, s. 42.)

Applied in Phillips v. Slaughter, 209 N. C. 543, 183 S. E. 897 (1936).

Cited in State v. Proctor, 221 N. C. 161, 19 S. E. (2d) 234 (1942).

§ 163-187.1. Automatic voting machines.—Any county or city of the State may, at the expense of such county or city, adopt and purchase, upon an installment basis or otherwise, or lease, with or without option to purchase, voting machines for use at all primaries and elections held within such county or city, or within any one or more precincts thereof, in such manner and upon such terms as are deemed to be in the best interest of such county or city. The use of any voting machines approved by the State Board of Elections in any primary or election held in any county or city shall be as valid as the use of paper ballots by the voters. (1949, c. 301.)

§ 163-187.2. Adoption of voting machines.—The board of county commissioners or the governing body of a municipality, may if they so elect, submit to the voters of such county or municipality at a general or special election the question of whether it shall adopt voting machines for use in primaries and elections; provided that no special election shall be called for the sole purpose of determining this question; provided that the question of adopting voting machines may be submitted to the voters upon a petition filed with the board of county commissioners or the governing body of the municipality signed by at least five hundred (500) of the registered voters of such county or municipality. The petition shall be in writing and the precinct name or number of each signer shall be written after his signature. If a majority of the voters casting votes in said election approve of same, the board of county commissioners of the county, or the governing body of the municipality, may adopt for use in primaries and elections such type or kind of voting machines as shall be approved by the State Board of Elections, and said machines may be used in any and all primaries and elections held in the county or municipality or any part thereof for voting, registering and counting votes cast in such primaries and elections; provided that the provisions of this section shall in no way limit or affect the right or authority of a county board of elections of any county, or the municipal authorities of any municipality, to adopt and purchase voting machines, either separately or in cooperation with the county, for use in county or municipal elections held in this State as is provided in G. S. 163-187.1. (1953, c. 1001; 1955, c. 1066, s. 1.)

Editor's Note.—The 1955 amendment rewrote the proviso at the end of the section.

§ 163-187.3. Providing machines.—The authorities adopting the use of voting machines shall, as soon as practical thereafter, provide for each voting place one or more voting machines in complete working order and shall thereafter preserve and keep them in repair and have custody thereof when not in use at an election. They shall appoint as many custodians as may be necessary for the proper preparation of the machines for a primary or election and for their maintenance, storage and care. If it is impractical to supply each precinct or election district with voting machines at any primary and election, as many may be supplied as it is practical to procure, and these may be used in the precincts or districts in the municipality or county as the officers adopting the machines may direct. (1953, c. 1001.)

§ 163-187.4. General provisions as to conduct of elections.—The State Board of Elections shall prescribe rules and regulations for the handling and operation of voting machines, including but not limited to the form of ballots to be used, the operation of voting machines for primaries and elections, the duties of the custodian, protection of the machines, instruction of election officers, examination of voting machines, instructions to voters on election day and assistance to voters, manner of voting, and to prescribe such other rules and regulations which they may deem to be necessary and requisite to the fair, honest and satisfactory use of the machines. (1953, c. 1001.)

§ 163-187.5: Repealed by Session Laws 1955, c. 1066, s. 2.

Article 21.

Corrupt Practices Act of 1931.

§ 163-188. Title of article.—This article may be cited as the Corrupt Practices Act of one thousand nine hundred thirty-one. (1931, c. 348, s. 1.)

Editor's Note.—This article makes more effective the control of the State over corrupt practices in primaries and elections. 9 N. C. Law Rev. 371.

§ 163-189. Definitions.—When used in this article:

(1) The term "campaign committee" includes any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any primary, general or special election;

(2) The term "candidate" means an individual whose name is presented for any office to be voted upon on any ballot at any primary, general or special election;

(3) The term "contribution" means any gift, payment, subscription, loan, advance, deposit of money, or anything of value, and includes any contract, promise or agreement to give, subscribe for, pay, loan, advance or deposit any money or other thing of value to or for the benefit of any candidate at any primary, general or special election, and whether or not said contract, promise or agreement is legally enforceable;

(4) The term "expenditure" means a payment, distribution, loan, advance, deposit or gift of money or anything else of value whatsoever, and includes a contract, promise or agreement to pay, distribute, give, loan, advance, or deposit any money or anything of value whatsoever, and whether or not such contract, promise or agreement is legally enforceable;

(5) The term "person" includes an individual, partnership, committee, association, corporation or any other organization or group of persons. (1931, c. 348, s. 2.)

§ 163-190. Detailed accounts to be kept by candidates and others.—It shall be the duty of every candidate and the chairman and treasurer of any and every campaign committee to keep a detailed and exact account of:

(1) All contributions made to or for such candidate or committee;

(2) The name and address of every person making any such contribution, and the date thereof;
(3) All expenditures made by or on behalf of such candidate or committee;
(4) The name and address of every person to whom any such expenditure is made, and the date thereof. (1931, c. 348, s. 3.)

§ 163-191. Detailed accounting to candidates of persons receiving contributions.—Every person who receives a contribution for a candidate or for a campaign committee in any primary, general or special election shall render such candidate or campaign committee, within five days after receipt of such contribution, a detailed account thereof, including the name and address of the person making such contribution. (1931, c. 348, s. 4.)

§ 163-192. Detailed accounting of persons making expenditures.—Every person who makes any expenditure in behalf of any candidate or campaign committee in any primary, general or special election shall render to such candidate or campaign committee, within five days after making such expenditure, a detailed account thereof, including the name and address of the person to whom such expenditure was made. (1931, c. 348, s. 5.)

§ 163-193. Statements under oath of pre-primary expenses of candidates; report after primary.—It shall be the duty of every person who shall be a candidate for nomination in any primary for any federal, State or district office, or for the State Senate in a district composed of more than one county, except where there shall be agreement for rotation as provided in § 163-113, to file, under oath, ten days before such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone for him, and of all contributions made to him, directly or indirectly and also to file, under oath, within twenty days after such primary, with the Secretary of State, an itemized statement of all expenditures made by him or which he knows to have been made by anyone else for him, and also of all contributions made to him, directly or indirectly, by any person, with detailed account of such contributions and expenditure as set out in § 163-194. And it shall be the duty of every person who shall be a candidate for nomination for the State Senate, except those to whom the preceding sentence applies, for the House of Representatives, and for any county office, to file a like statement with the clerk of the superior court of the county of his residence at the times hereinbefore prescribed for filing such statements by candidates for federal, State and district officers as set out in the preceding sentence. It shall be the duty of each chairman of a county board of elections to send a written notice to each candidate in a primary election who filed a notice of candidacy with said chairman, and who had one or more candidates to run against the candidate in the primary, of this requirement to file his or her primary campaign statement of expenses with the clerk of the superior court both before and after the primary. Such notice shall not be required where an unopposed candidate did not have to run in the primary and was nominated without party opposition. (1931, c. 348, s. 6; 1959, c. 1203, s. 10.)

Editor's Note.—The 1959 amendment added the last two sentences.

§ 163-194. Contents of such statements.—The statement of contributions and expenditures as required by the preceding section shall be itemized as follows:
(1) The name and address of each person who has made a contribution to or for such candidate or to or for his campaign committee within the calendar year, together with the amount and date of such contribution;
(2) The total sum of all contributions made to or for such candidate or to or for his campaign committee during the calendar year;
(3) The name and address of each person to whom, during the calendar year, an expenditure has been made by or in behalf of such candidate or by

or in behalf of his campaign committee, and the amount, date, and purpose of such expenditure;

(4) The name and address of each person by whom an expenditure has been made during the calendar year in behalf of such candidate or his campaign committee and reported to such candidate or campaign committee, and the amount, date, and purpose of such expenditure;

(5) The total sum of all expenditures made during the calendar year in behalf of such candidate or his campaign committee by any person and reported to such candidate or his campaign committee, and the amount, date, and purpose of such expenditure;

(6) The total sum of all expenditures made by such candidate or his campaign committee, or any person in his behalf during the calendar year. (1931, c. 348, s. 7.)

§ 163-195. Statements required of campaign committees covering more than one county; verification of statements required.—A like statement as that required in the preceding section shall be filed by any and all campaign committees as hereinbefore defined with the Secretary of State not more than fifteen days nor less than ten days before any primary, general or special election, and not more than twenty days after any such primary, general or special election, if said campaign committee is making expenditures in more than one county; and if such campaign committee is making expenditures in only one county, a like or similar report so itemized shall be made within the same periods to the clerk of the superior court of such county.

All of the statements or reports of contributions or expenditures as in this article required of any candidate or campaign committee must be verified by the oath or affirmation of the person filing such statement or report, taken before any officer authorized to administer oaths. (1931, c. 348, s. 8.)

§ 163-196. Certain acts declared misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections to prepare the books, tickets and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ticket or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election or any registrar or judge of elections in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppress any legally

qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to make any contribution or expenditure to aid, or in behalf of any candidate or campaign committee, in any primary, general or special election, unless the same be reported immediately to such candidate or campaign committee, to the end that it may be included by him or it in the reports required of him by law;

(8) For any candidate or any chairman or treasurer of a campaign committee to fail to make under oath the report or reports required of him or it by §§ 163-193 to 163-195, or for any campaign committee to fail to furnish to a candidate a duplicate copy of the report to be made by it or its chairman or treasurer.

It shall be the duty of the Secretary of State, after the time has expired for the filing of said statement of campaign contributions and expenditures with the Secretary of State by candidates in a primary election, as is provided in § 163-193, to immediately thereafter report to the Attorney General of North Carolina the names and addresses of all candidates for federal, State, or district offices who have failed to file such statement in compliance with the provisions of §§ 163-193 and 163-194. Upon the receipt of said report from the Secretary of State, it shall be the duty of the Attorney General of North Carolina to notify the proper prosecuting officer who shall prosecute any person violating the provisions of this article;

(9) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(10) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(11) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(12) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(13) For any register of deeds or clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement in a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(14) For any corporation doing business in this State, either under domestic or foreign charter, directly or indirectly, to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation of this subdivision shall, in addition to being guilty of a misdemeanor as hereinbefore set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof;

(15) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires. (1931, c. 348, s. 9; 1951, c. 983, s. 1.)

Editor's Note.—The 1951 amendment added the second paragraph to subdivision (8), deleted former subdivision (9) and renumbered the following subdivisions accordingly.

Indictment for Violation of Subdivision (4) Held Insufficient.—An indictment charging that defendant unlawfully and willfully by his own boisterous and violent conduct disturbed a named registrar while in the performance of her duties in examining a named applicant for registration was insufficient, although charging the offense in the words of this section, since such words did not in themselves inform the accused of the specific offense of which he was accused so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense. State v. Walker, 249 N. C. 35, 105 S. E. (2d) 101 (1958).

Applied, as to subdivision (11), in State v. Pritchard, 227 N. C. 168, 41 S. E. (2d) 287 (1947).

§ 163-197. Certain acts declared felonies.—Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than four months or fined not less than one thousand dollars, or both, in the discretion of the court. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of the election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ticket, or to do any fraudulent act, or knowingly and fraudulently omit to do any act to make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person, convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters, and the person so offending shall be guilty of perjury;

(7) For any person with intent to commit a fraud to register or vote at more than one box or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer or person to make, certify, deliver

or transmit any false returns of any primary or election, or to make any erasure or alteration in any registration or poll books with intent to commit a fraud;

(10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of the duties in the registration of voters or in conducting any primary or election;

(12) For any registrar, poll holder, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as an elector, or to attempt thereby to secure to any person the privilege of voting. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C. S., s. 4186; 1931, c. 348, s. 10; 1943, c. 543.)

Editor's Note.—The 1943 amendment inserted the words "or person" in subdivision (9).

Stated in Overton v. Mayor & City Com'rs of Hendersonville, 253 N. C. 306, 116 S. E. (2d) 808 (1960).

§ 163-198. Compelling self-incriminating testimony; person so testifying excused from prosecution.—No person shall be excused from attending or testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of the two preceding sections, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of the said two preceding sections; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11.)

Editor's Note.—For a general discussion of the limits to self incrimination, see 15 N. C. Law Rev. 229.

§ 163-199. Duty of Attorney General and solicitors to investigate violations of article.—It shall be the duty of the Attorney General, the solicitors of the several judicial districts, and all prosecuting attorneys of courts inferior to the superior court, to make diligent inquiry and investigation with respect to any violations of this article, and said officers are authorized and empowered to subpoena and compel the attendance of any person or persons before them for the purpose of making such inquiry and investigation. (1931, c. 348, s. 12.)

§ 163-200. Duty of Secretary of State and superior court clerks to call for required statements and report violations.—It shall be the duty of the Secretary of State and the several clerks of the superior court to call upon the candidates and chairmen and treasurers of campaign committees for the reports required to be made to them by §§ 163-193 to 163-195. If any candidate or chairman or treasurer of a campaign committee shall fail or neglect to make to the Secretary of State the reports required by said sections, then the Secretary of State shall bring such failure to the attention of the Attorney General, whose duty it shall then be to initiate a prosecution against such candidate or chairman or treasurer of such campaign committee for such violation of this article. If the Attorney General shall be a candidate in any such primary or election, such duty as herein required to be performed by him with respect to any contest in which he participates shall be performed by the solicitor of the judicial district of which Wake County is a part. If a candidate or the chairman or treasurer of a campaign committee fails to make the report to the clerk of the superior court as required by said sections, then said clerk of the superior court shall bring such failure to the attention of the solicitor of the district in which such county is a part, and said solicitor shall institute a prosecution for violation of this article. (1931, c. 348, s. 13.)

ARTICLE 22.

Other Offenses against the Elective Franchise.

§ **163-201. Intimidation of voters by officers made misdemeanor.**—It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which such subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine and/or imprisonment, in the discretion of the court. (1933, c. 165, s. 25.)

§ **163-202. Disposing of liquor at or near polling places.**—If any person shall give away or shall sell any intoxicating liquor, except for medical purposes and upon the prescription of a practicing physician, at any place within five miles of the polling place, at any time within twelve hours next preceding or succeeding any public election, whether general, local or municipal, or during the holding thereof, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred nor more than one thousand dollars. (1901, c. 89, s. 76; 1901, c. 531; Rev., s. 3389; C. S., s. 4188.)

Editor's Note.—In State v. Edwards, 134 N. C. 636, 46 S. E. 766 (1904), the court discusses the former provisions regulating this subject. Public Laws 1901, ch. 89, § 76, omitted the words "or sell" from the section and hence it was decided that it was no offense for a person who has a license, to sell liquors on an election day, although they could not be given away. This case was decided in 1904 and by Public Laws 1905, ch. 531, the words "or shall sell" were again inserted in the section.

Form of Indictment.—An indictment for selling or giving away spirituous liquors during a public election should set forth the name of the person to whom the liquor was sold or given; also the indictment should negative the selling upon "the prescription of a practicing physician and for medical purposes," which is allowed by the statute. State v. Stamey, 71 N. C. 202 (1874).

§ **163-203. False oath of voter in registering.**—If any person shall knowingly register under the permanent registration law who is not qualified within the meaning of that law and article six, section four, of the Constitution, or if any person shall knowingly take any false oath in registering under the same, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than five years. (1901, c. 550, s. 12; Rev., s. 3392; C. S., s. 4191.)

§ **163-204. Willful failure of registration officer to discharge duty.**—If any officer charged with any duty under the permanent registration law willfully fails and neglects to perform the same, he shall be guilty of a misdemeanor, and upon conviction shall forfeit his office and be fined not more than one thousand dollars or imprisoned not more than five years. (1901, c. 550, s. 11; Rev., s. 3393; C. S., s. 4194.)

§ **163-205:** Repealed by Sessions Laws 1943, c. 543.

§ **163-206. Using funds of insurance companies for political purposes.**—No insurance company or association, including fraternal beneficiary associations, doing business in this State shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent for any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars. Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The Insurance Commissioner may revoke the license of any company violating this section. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding. (1907, c. 121; C. S., s. 4199.)

§ **163-207. Convicted officials; removal from office.**—Any public official who shall be convicted of any violation of any of the provisions of article 21 or article 22 of this chapter, in addition to the punishment provided by law for such violation, may be removed from office by the judge presiding at the trial and shall be ineligible to hold any other public office until his citizenship is restored as provided by law in case of conviction of a felony, and for a period of two years in case of conviction of a misdemeanor. (1949, c. 504.)

ARTICLE 23.

Petitions for Elections.

§ **163-208. Registration of notice of circulation of petition.**—From and after July 1, 1957, notice of circulation of a petition calling for any election shall be registered with the election board with which such petition is to be filed, and the date of registration of such notice shall be the date of issuance and commencement of circulation of such petition. (1957, c. 1239, s. 1.)

§ **163-209. Petition void after one year from registration.**—Petitions calling for elections shall be and become void and of no further force and effect one year after the date the notice of circulation is registered with the election board with which the same is required to be filed; and notwithstanding any public, special, local or private act to the contrary, no election shall thereafter be called or held pursuant to or based upon any such void petition. (1957, c. 1239, s. 2.)

§ **163-210. Limitation on petitions heretofore circulated.**—Petitions heretofore circulated calling for elections shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local or private act to the contrary, no election shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957. (1957, c. 1239, s. 3.)

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Concerning the General Statutes of North Carolina.

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ARTICLE 1.

The General Statutes.

§ **164-1. Title of revision.**—This revision shall be known as the "General Statutes of North Carolina" and may be cited in either of the following ways: "General Statutes of North Carolina"; or "General Statutes"; or "G. S."

Editor's Note.—Acts 1945, c. 157 inserted the heading of this article.

§ **164-2. Effect as to repealing other statutes.**—All public and general statutes not contained in the General Statutes of North Carolina are hereby repealed with the exceptions and limitations hereafter mentioned in this chapter. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the General Statutes of North Carolina or by the omission of any repealing statute from the General Statutes. All public and general statutes enacted at the regular session of the General Assembly of 1943 shall be deemed to repeal any conflicting provisions of the General Statutes of North Carolina.

Cited in Baker v. Varser, 240 N. C. 260, 82 S. E. (2d) 90 (1954).

§ **164-3. Repeal not to affect rights accrued or suits commenced.**—The repeal of the statutes described in § 164-2 shall not affect any act done, any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect, but the proceedings in any such case shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ **164-4. Offenses, penalties and liabilities not affected.**—No offense committed, no penalty or forfeiture incurred, no liability arising, and no remedy availed of, under any of the statutes hereby repealed, before the time when such repeal shall take effect shall be affected by the repeal.

§ **164-5. Pending actions and proceedings not affected.**—No action or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ **164-6. Effect of repeal on persons holding office.**—All persons who at the time the General Statutes of North Carolina becomes effective shall hold any office under any of the statutes hereby repealed shall continue to hold the same according to the tenure thereof.

§ **164-7. Statutes not repealed.**—The General Statutes of North Carolina shall not have the effect of repealing statutes or provisions of statutes which affect only a particular locality, public-local or private statutes, statutes exempting pending litigation from operation of statutes, statutes relating to the boundary of the State or of any county, acts ceding or relating to the ceding of lands of the State to the federal government, statutes relating to the Cherokee lands, statutes relating to the construction or interpretation of statutes, statutes by virtue of which bonds have been issued and are outstanding on the effective date of the General Statutes, validating acts or curative statutes, or acts granting pensions to named individuals if such statutes were in force on the effective date of the General Statutes.

Applied in State v. Gales, 240 N. C. 319, 82 S. E. (2d) 80 (1954).

§ **164-8. General Statutes of North Carolina effective December 31, 1943.**—All provisions, chapters, subdivisions of chapters and sections contained in the General Statutes of North Carolina shall be in force from and after the thirty-first day of December one thousand nine hundred and forty-three.

Quoted in Kirby v. Stokes County Board of Education, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

§ **164-9. Completion of General Statutes by Division of Legislative Drafting and Codification of Statutes.**—The Division of Legislative Drafting and Codification of Statutes of the State Department of Justice, under the direction and supervision of the Attorney General, shall complete and perfect the General Statutes, as enacted by the General Assembly of 1943, by changing all references therein to the "Code," "North Carolina Code," "Code of 1943" or "North Carolina Code of 1943" to read "General Statutes," and by causing to be inserted therein all such general public statutes as may be enacted at the 1943 session of the General Assembly and all amendments, in their proper places in sections under the appropriate chapter and subdivisions of chapters, and by deleting all sections or portions of sections found to be expressly repealed, or found to be repealed by virtue of the repeal of any cognate sections or parts of sections of the Consolidated Statutes or session laws, and by deleting repealed provisions and substituting in lieu thereof all proper amendments of the General Statutes or of cognate sections of the Consolidated Statutes or session laws; and the Division is hereby authorized to change the number of sections and chapters, transfer sections, chapters and subdivisions of chapters and make such other corrections which do not change the law, as may be found by the Division necessary in making an accurate, clear, and orderly statement of said laws. After the completion of such codification of the general and public laws of 1943, such laws, as they appear in the printed volumes of the General Statutes, shall be deemed an accurate codification of the statutes of 1943 contained therein. (1943, c. 15, s. 3.)

§ **164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors.**—The Division of Legislative Drafting and Codification of Statutes of the Department of Justice, under the direction and supervision of the

Attorney General, shall have the following duties and powers with regard to the supplements to the General Statutes:

(1) Within six months after the adjournment of each General Assembly, or as soon thereafter as possible, the Division shall cause to be published under its supervision, cumulative pocket supplements to the General Statutes, and any replacement or recompiled volumes thereof, which shall contain an accurate transcription of all laws of a general and permanent nature enacted by the General Assembly, the material contained in the next preceding pocket and interim supplements, complete and accurate annotations to the statutes, appendix and other material accumulated since the publication of the next preceding pocket and interim supplements, and a cumulative index of said material.

(2) Periodically, every six months after the publication and issuance of a cumulative pocket supplement following a session of the General Assembly, or as soon thereafter as possible, except when the publication of the cumulative pocket supplement makes it unnecessary, the Division shall cause to be published an interim supplement containing all pertinent annotations and other material found by the Division to be necessary and proper, accumulating since the publication of the said cumulative pocket supplement or the last interim supplement.

(3) In the preparation of the general and permanent laws enacted by the General Assembly the Division is hereby authorized:
  a. To rearrange the order of chapters, subchapters, articles, sections and other divisions or subdivisions;
  b. To provide titles for any such divisions or subdivisions and section titles or catchlines when they are not provided by such laws;
  c. To adopt a uniform system of lettering or numbering sections and the various subdivisions thereof and to reletter or renumber sections and section subdivisions in accordance with such uniform system;
  d. To rearrange definitions in alphabetical order;
  e. To rearrange lists of counties in alphabetical order; and
  f. To make such other changes in arrangement and form that do not change the law as may be found by the Division necessary for an accurate, clear and orderly codification of such general and permanent laws. (1945, c. 863; 1947, c. 150; 1951, c. 1149, s. 1; 1957, c. 1013.)

Editor's Note.—The 1947 amendment rewrote subdivision (3). The 1951 amendment inserted the words "and any replacement or recompiled volumes thereof" in subdivision (1).

The 1957 amendment deleted the words "the four volumes of" formerly appearing before "the General Statutes" near the beginning of subdivision (1). It also deleted the words "for inclusion in the cumulative pocket supplements" formerly appearing after "Assembly" near the beginning of subdivision (3).

For brief comment on the 1947 amendment, see 25 N. C. Law Rev. 460.

§ 164-11. Supplements prima facie statement of laws; method of citation.—(a) The supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes, when printed under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, shall establish prima facie the general and permanent laws of North Carolina contained in said supplements.

(b) The cumulative pocket supplement may be cited as "G. S., Supp. 19. ." and the interim supplement may be cited as ". . . . G. S. In. Supp. 19. . . .," the blank in front of "G. S." to be filled in with the number of the interim supplement for that year. (1945, c. 863; 1951, c. 1149, s. 2.)

Cross Reference.—For subsequent law, see § 164-11.1.

Editor's Note.—The 1951 amendment inserted "or to any replacement or recompiled volumes of the General Statutes" in subsection (a).

§ 164-11.1. Cumulative Supplements prima facie evidence of laws.—The 1945, 1947, 1949, 1951, 1953, 1955, and 1957 Cumulative Supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes as compiled and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina, are hereby constituted and declared to be prima facie evidence of the laws of North Carolina contained in said supplements. (1949, c. 45; 1951, c. 1149, s. 3; 1953, c. 140; 1955, c. 53; 1957, c. 371.)

Cross Reference.—See § 164-11.

Editor's Note.—The 1951 amendment made this section applicable to the 1949 and 1951 cumulative supplements.

The 1953 amendment made this section applicable to the 1953 Cumulative Supplement, and inserted the reference to "replacement or recompiled volumes."

The 1955 amendment made this section applicable to the 1955 Cumulative Supplement.

The 1957 amendment made this section applicable to the 1957 Cumulative Supplement.

For brief comment on this section, see 27 N. C. Law Rev. 478.

§ 164-11.2. Adoption of Volumes 2A, 2B and 2C of the General Statutes.—The chapters, subchapters, articles and sections, now comprising Volume 2 of the General Statutes of North Carolina and the cumulative supplements thereto, consisting of §§ 26-1 through 105-462 now in force as amended, are hereby re-enacted and designated Volumes 2A, 2B and 2C, respectively, of the General Statutes of North Carolina: Provided, that this enactment of Volumes 2A, 2B and 2C shall not include any appended annotations, editorial notes, comments, cross references, legislative or historical references, or other material collateral or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body thereof. (1951, c. 900.)

§ 164-11.3. Adoption of Volumes 3A, 3B and 3C of the General Statutes.—The chapters, subchapters, articles and sections now comprising Volume 3 of the General Statutes of North Carolina, and cumulative supplements thereto, consisting of §§ 106-1 through 166-13, now in force, as amended, are hereby re-enacted and designated Volumes 3A, 3B and 3C respectively of the General Statutes of North Carolina. This re-enactment of Volumes 3A, 3B and 3C shall not be construed to invalidate or repeal any acts which have been passed during the 1953 Session of the General Assembly, prior to February 18, 1953, nor shall this re-enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material collected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body thereof. (1953, c. 99.)

§ 164-11.4. Adoption of Volumes 1A, 1B and 1C of the General Statutes.—The chapters, subchapters, articles and sections now comprising Volume 1 of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of §§ 1-1 through 27-59, now in force, as amended, are hereby re-enacted and designated Volumes 1A, 1B and 1C respectively of the General Statutes of North Carolina. This enactment of Volumes 1A, 1B and 1C shall not be construed to invalidate or repeal any acts which have been passed during the 1955 Session of the General Assembly, prior to February 11, 1955, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1955, c. 43.)

§ 164-11.5. Adoption of Replacement Volumes 2C and 3B of the General Statutes.—(a) The chapters, subchapters, articles and sections now comprising Volume 2C of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 83-1 through 105-462, now in force, as amended, are hereby re-enacted and designated Replacement Volume 2C of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 117-1 through 150-34, now in force, as amended, are hereby re-enacted and designated Replacement Volume 3B of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2C and 3B shall not be construed to invalidate or repeal any acts which have been passed during the 1959 Session of the General Assembly, prior to February 24, 1959, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1959, c. 12.)

§ **164-11.6. Adoption of Replacement Volumes 2B and 3A of the General Statutes.**—(a) The chapters, subchapters, articles and sections now comprising Volume 2B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 53-1 through 82-18, now in force, as amended, are hereby re-enacted and designated as Replacement Volume 2B of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of §§ 106-1 through 116-185, now in force, as amended, are hereby re-enacted and designated Replacement Volume 3A of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2B and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1961 Session of the General Assembly, prior to March 14, 1961, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1961, cc. 38, 185.)

Editor's Note.—Chapter 38 of the 1961 Session Laws inserted this section and in subsection (c) erroneously referred to 3C instead of 3A. Chapter 185 corrected the matter.

ARTICLE 2.

The General Statutes Commission.

§ **164-12. Creation; name.**—There is hereby created and established a commission to be known as "The General Statutes Commission." (1945, c. 157.)

§ **164-13. Duties; use of funds.**—(a) It shall be the duty of the Commission:

(1) To advise and co-operate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction for which the Division is made responsible by § 114-9 (c).

(2) To advise and co-operate with the Division of Legislative Drafting and Codification of Statutes in the preparation and issuance by the Division of supplements to the General Statutes pursuant to § 114-9 (b).

(3) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(4) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.

(b) Funds made available to the Commission by appropriation of the General Assembly, by allotment from the Contingency and Emergency Fund, or otherwise, may be used to employ the services of persons especially qualified to assist in the work of the Commission and for necessary clerical assistance. (1945, c. 157; 1951, c. 761; 1957, c. 1405.)

Cross Reference.—As to subsequent statute relating to duties of Revisor of Statutes in regard to § 114-9, subdivision (3), see § 114-9.1.

Editor's Note.—The 1951 amendment added subdivision (4) and former subdivision (5) of subsection (a).

The 1957 amendment rewrote the provisions appearing in subsection (b) which formerly was contained in subdivision (5) of subsection (a).

For brief comment on the 1951 amendment, see 29 N. C. Law Rev. 358.

§ 164-14. Membership; appointments; terms; vacancies.—(a) The Commission shall consist of nine members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;

(2) One member, by the president of the North Carolina Bar Association;

(3) One member, by the dean of the school of law of the University of North Carolina;

(4) One member, by the dean of the school of law of Duke University;

(5) One member, by the dean of the school of law of Wake Forest College;

(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;

(7) One member, by the President of the Senate of each General Assembly from the membership of the Senate;

(8) Two members, by the Governor.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest College shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest College shall be made in the even numbered years, and appointments made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be made in the odd numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May thirty-first two years thereafter. All such appointments shall be made not later than May thirty-first of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in § 164-14, or by the successor of such person; and if such vacancy is not filled within thirty days after the vacancy occurs, it shall then be filled by appointment by the Governor.

(e) All appointments shall be reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3.)

Editor's Note.—The 1947 amendment struck out "with the approval of the council thereof" formerly appearing after the word "Bar" in subdivision (1) of subsection (a).

For comment on the 1947 amendment, see 25 N. C. Law Rev. 459.

§ 164-15. Meetings; quorum.—The Commission shall hold not less than two regular meetings each year, of which one shall be held in June and one in November, at such times during those months as may be fixed therefor by the Commission itself. The Commission may hold such other regular meetings as it may provide for by its rules. Special meetings may be called by the chairman, or by any two members of the Commission, upon such notice and in such manner as may be fixed therefor by the rules of the Commission. The regular June and November meetings of the Commission shall be held in Raleigh, but the Commission may provide for the holding of other meetings from time to time at any other place or places in the State. The first meeting of the Commission shall be held in June one thousand nine hundred and forty-five upon the call of the Attorney General at such time and upon such notice as he may designate. A majority of the members of the Board shall constitute a quorum. (1945, c. 157.)

§ **164-16. Officers.**—At its regular June meeting in the odd numbered years the Commission shall elect a chairman and a vice-chairman for a term of two years and until their successors are elected and assume the duties of their positions. The Revisor of Statutes shall be ex officio secretary of the Commission. (1945, c. 157; 1947, c. 114, s. 2.)

Editor's Note.—The 1947 amendment substituted "Revisor of Statutes" for "Director of the Division of Legislative Drafting and Codification of Statutes" in the second sentence.

For comment on the 1947 amendment, see 25 N. C. Law Rev. 459.

§ **164-17. Committees; rules.**—The Commission may elect, or may authorize its chairman to appoint, such committees of the Commission as it may deem proper. The Commission may adopt such rules not inconsistent with this article as it may deem proper with respect to any and all matters relating to the discharge of its duties under this article. (1945, c. 157.)

§ **164-18. Reports.**—The Commission shall submit to each regular session of the General Assembly a report of its work during the preceding two years, together with such recommendations as it may deem proper. (1945, c. 157.)

§ **164-19. Compensation.**—Members of the Commission shall be paid ten dollars a day for attendance upon meetings of the Commission, or upon attendance of meetings of committees of the Commission, together with such subsistence and travel allowance as may be provided by law. (1945, c. 157.)

Chapter 165.

Veterans.

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ARTICLE 1.

North Carolina Veterans Commission.

§ **165-1. Short title.**—This article may be cited as "The North Carolina Veterans Commission Act." (1945, c. 723, s. 1.)

§ **165-2. Definition of terms.**—Wherever used in this article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(1) "Commission" means the North Carolina Veterans Commission.

(2) "Director" means the Director of the North Carolina Veterans Commission.

(3) "Veteran" means any person who has served at any time in the armed forces of the United States during any war in which the United States was a belligerent, or any person who is entitled to any benefits or rights under the laws of the United States, particularly the Servicemen's Readjustment Act of one thousand nine hundred and forty-four, or any

rules, regulations or directives issued pursuant thereto, by reason of service in the armed forces of the United States during any war in which the United States has engaged.

(4) "Veterans organization" means a nationally recognized veterans organization whose membership is composed of veterans as defined in this section and which has been chartered by an act of the United States Congress. (1945, c. 723, s. 1; 1949, c. 430, s. 1.)

Editor's Note.—The 1949 amendment added subdivision (4).

§ **165-3. Purpose of article.**—The purpose of this article is to create a commission whose functions, purpose and duty it shall be to co-ordinate, harmonize, and perform the services now being rendered veterans by various State departments, agencies, and instrumentalities to the end that such State services may be more effectively and economically administered; and that such co-ordinated State services may give to all veterans, through this Commission, a definite and practical means of availing themselves of all such rights and benefits as they may be entitled to as veterans, without unnecessary inconvenience or delay. In no sense is this Commission intended to supersede or duplicate the work of federal, private, or civic agencies rendering service to veterans, it being the function of this Commission to furnish a means of contact and co-ordination between veterans and all governmental, private, or civic service facilities in order to make more fully and readily available to all veterans, all rights and benefits to which they may be entitled. (1945, c. 723, s. 1.)

§ **165-4. Creation; name.**—There is hereby created a Commission to be known as the North Carolina Veterans Commission. (1945, c. 723, s. 1.)

§ **165-5. Membership; vacancies; chairman; meetings; compensation.**—(a) The membership of the Commission shall consist of five persons appointed by the Governor, who shall be veterans as defined in § 165-2 of this article. Both major political parties in the State shall be represented on the Commission. The department commander or official head of each recognized veterans organization in this State shall be an ex officio member of the Commission but shall have no vote as a member of said Commission.

(b) For the initial term of the members of the Commission, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years; thereafter the successors of each shall be appointed for terms of five years and until their successors are appointed and qualify.

(c) Vacancies in the Commission shall be filled by the Governor for the unexpired term.

(d) The Commission shall select one of its members to act as chairman.

(e) The Commission shall meet quarterly in January, April, June, and October, and at such other times as may be fixed by the chairman. The Commission may be convoked at such other times as the Governor or chairman may deem necessary.

(f) Members and ex officio members of the Commission shall receive a per diem of seven dollars ($7.00) while attending meetings of the Commission and, in addition thereto, shall be allowed reasonable travel and subsistence expenses in accordance with the applicable schedules and procedure of the Budget Bureau. (1945, c. 723, s. 1; 1945, c. 1087; 1949, c. 430, s. 2; 1951, c. 1048, ss. 1, 2.)

Editor's Note.—The 1949 amendment added the last sentence of subsection (a).

The 1951 amendment deleted "nor receive compensation per diem or other expenses for services rendered" formerly appearing at the end of subsection (a), and inserted "and ex officio members" near the beginning of subsection (f).

§ **165-6. Powers and duties of the Commission; limitation.**—(a) The Commission shall have the following powers and duties:

(1) To acquaint itself, the Director, and such other assistants and employees as may be employed for carrying out the purposes of this article, with the laws, rules, and regulations, federal, State, and local, enacted for the benefit of veterans, their families, and dependents.

(2) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to co-operate with agencies furnishing information or services throughout the State in order to inform such agencies regarding the availability of (i) education, training and retraining facilities, (ii) health, medical, rehabilitation, and housing services and facilities, (iii) employment and reemployment services, (iv) provisions of federal, State, and local laws, rules, and regulations affording rights, privileges, and benefits to veterans, their families, and dependents, and in respect to such other matters of similar, related, or appropriate nature not herein set out.

(3) To assist veterans, their families, and dependents in the presentation, processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, State, or local laws, rules, and regulations.

(4) To co-operate with the national, State, and local governmental, private, and civic agencies and instrumentalities securing services or any benefits to veterans, their families, and dependents.

(5) To accept any property, funds, service, or facilities from any source, public or private, granted in aid or furtherance of the administration of the provisions of this article: Provided, that no financial obligation shall be thereby incurred without the authorization and approval of the Director of the Budget.

(6) Subject to the approval of the Director of the Budget to establish in any county, city, or town of the State such branch or district offices as the Commission may find necessary for the proper administration of this article.

(7) Subject to the approval of the Director of the Budget, to enter into any contract or agreement with any person, firm, or corporation, or governmental agency or instrumentality in furtherance of the purposes of this article, and to make all rules and regulations necessary for the proper and effective administration of its duties.

(b) Any county, city, or town may employ one or more persons to serve in such county, city, or town, under the supervision of the Commission and to perform such duties as the Commission may direct in carrying out the provisions and purposes of this article; and such county, city, or town is hereby authorized to pay the salaries of such persons so employed, together with such other expense for quarters, equipment, supplies, and incidentals as may be necessary to give proper effect to this article: Provided, that the Commission is hereby authorized and empowered in its discretion to contribute to the salaries and expenses of such persons as are employed by counties, cities, or towns, in order to provide for joint maintenance of the service rendered by them.

(c) There is hereby appropriated to the North Carolina Veterans Commission out of the general fund of the State the sum of fifty thousand dollars for the fiscal year beginning July 1, 1949, and ending June 30, 1950, and a like sum for the fiscal year beginning July 1, 1951, to be expended as set out below.

There may be paid by North Carolina Veterans Commission, in its discretion, to any county of the State, in quarterly installments, for each fiscal year of the next biennium a sum equal to such amount as the board of county commissioners of such county appropriates for the employment during such fiscal year of a county veterans service officer, not exceeding one thousand dollars ($1000) to any one county, such money to be expended by the recipient county in supplementing its own appropriation for payment of the salary and other necessary expenses of a county veterans service officer.

The board of county commissioners of each county of the State is hereby authorized to appropriate such amount as it may deem necessary to pay the salary of a county veterans service officer, and to secure supplementary funds from the State, and the payment of such salary is hereby declared to be for a public purpose. (1945, c. 723, s. 1; 1949, c. 1292.)

Local Modification.—Mitchell: 1953, c. 602; Yancey: 1959, c. 936.

Editor's Note.—The 1949 amendment added subsection (c).

§ **165-7. Director and employees.**—The Commission shall elect, with the approval of the Governor, a Director who shall be a veteran of competency and ability. He shall serve for such time as his services are satisfactory to the Commission and his salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

The Director may, with the approval of the Commission, employ such assistants as may be necessary effectively to administer the provisions of this article and with the approval of the Commission may establish at such veterans administration facilities as are now or may hereafter be established, necessary personnel for the processing and presentation of all claims and benefits under federal or State laws, rules, and regulations; and to fix the salaries of such personnel subject to the approval of the Director of the Budget. In employing such persons, preference shall be given to veterans. (1945, c. 723, s. 1; 1957, c. 541, s. 19.)

Editor's Note.—Prior to the 1957 amendment the salary of the Director was fixed by the Commission and approved by the Director of the Budget.

§ **165-8. Biennial report.**—The Commission shall biennially prepare and submit to the Governor and the General Assembly a report of its activities during the preceding two years. (1945, c. 723, s. 1.)

§ **165-9. Quarters.**—The Board of Public Buildings and Grounds shall provide in the city of Raleigh, adequate quarters for the central office of the Commission. The Division of Purchase and Contract shall arrange for leasing or shall otherwise provide such necessary quarters as the Commission may require for the transaction of its business in other sections of the State. (1945, c. 723, s. 1.)

§ **165-10. Appropriation.**—The Governor, with the approval of the Council of State, is hereby authorized and empowered to allocate from time to time from the contingency and emergency fund, such funds as may be necessary to carry out the intent and purposes of this article. (1945, c. 723, s. 1.)

§ **165-11. Transfer of veterans activities.**—As promptly as he may deem practicable after the appointment of the Commission, the Governor shall transfer to the Commission such facilities, properties, and activities now being held or administered by the State for the benefit of veterans, their families, and dependents as he may deem proper.

(1) The Governor may transfer to the Commission all such funds or appropriations now available for any veterans service, including appropriations and allocations for the impending biennium.

(2) The provisions of subdivision (1) of this section shall not apply to the War Veterans Loan Administration, this agency being in the process of liquidation.

(3) The provisions of subdivision (1) of this section shall not apply to the activities of the North Carolina Employment Security Commission in respect to veterans. (1945, c. 723, s. 1.)

Editor's Note.—The words "Unemployment Compensation Commission" in subdivision (3) were changed to "Employment Security Commission" by virtue of G. S. 96-1.1.

ARTICLE 2.

Minor Veterans.

§ 165-12. Short title.—This article may be cited as "The Minor Veterans Enabling Act." (1945, c. 770.)

Editor's Note.—For discussion of this article, see 23 N. C. Law Rev. 359.

§ 165-13. Definition.—In this article, unless the context or subject matter otherwise requires, the term, "Servicemen's Readjustment Act" means the Servicemen's Readjustment Act of one thousand nine hundred and forty-four as enacted by the Congress of the United States (58 Statutes at Large 284, 38 U. S. Code 693 and following), together with any amendments thereof or related legislation supplemental or in addition thereto, and any rules, regulations, or directives issued pursuant thereto. (1945, c. 770.)

§ 165-14. Application of article.—This article applies to every person, either male or female, eighteen years of age or over, but under twenty-one years of age, who is, or who may become, entitled to any rights or benefits under the Servicemen's Readjustment Act. (1945, c. 770.)

§ 165-15. Purpose of article.—The purpose of this article is to remove the disqualification of age which would otherwise prevent persons to whom this article applies from taking advantage of any right or benefit to which they may be or may become entitled under the Servicemen's Readjustment Act, and to assure those dealing with such minor persons that the acts of such minors shall not be invalid or voidable by reason of the age of such minors, but shall in all respects be as fully binding as if said minors had attained their majority; and this article shall be liberally construed to accomplish that purpose. (1945, c. 770.)

§ 165-16. Rights conferred; limitation.—(a) Every person to whom this article applies is hereby authorized and empowered, in his or her own name without order of court or the intervention of any guardian or trustee:

(1) To purchase or lease any property, either real or personal, or both, which such person may deem it desirable to purchase or lease in order to avail himself or herself of any of the benefits of the Servicemen's Readjustment Act, and take title to such property in his or her own name or in the name of himself or herself and spouse.

(2) To execute any note or similar instrument for any part or all of the purchase price of any property purchased pursuant to subdivision (1) of this section and to secure the payment thereof by retained title contract, mortgage, deed of trust or other similar or appropriate instrument.

(3) To execute any other contract or instrument which such person may deem necessary in order to enable such person to secure the benefits of the Servicemen's Readjustment Act.

(4) To execute any contract or instrument which such person may deem necessary or proper in order to enable such person to make full use of any property purchased pursuant to the provisions of the Servicemen's Readjustment Act, including the right to dispose of such property; such contracts to include but not to be limited to the following:

  a. With respect to a home: Contracts for insurance, repairs, and services such as gas, water, and lights, and contracts for furniture and other equipment.

  b. With respect to a farm: Contracts such as are included in paragraph (a) of this subdivision (4) above, together with contracts for livestock, seeds, fertilizer and farm equipment and machinery, and contracts for farm labor and other farm services.

  c. With respect to a business: Contracts such as are included in paragraph (a) of this subdivision (4), together with such other contracts as such person may deem necessary or proper for the maintenance and operation of such business.

(b) Every person to whom this article applies may execute such contracts as are hereby authorized in his own name without any order from any court, and without the intervention of a guardian or trustee, and no note, mortgage, conveyance, deed of trust, contract, or other instrument, conveyance or action within the purview of this article shall be invalid, voidable or defective by reason of the fact that the person executing or performing the same was at the time a minor.

(c) In respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee, and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age.

(d) All such authority and power as are conferred by this article are subject to all applicable provisions of the Servicemen's Readjustment Act. (1945, c. 770.)

Editor's Note.—The 1947 amendment inserted present subsection (b) and designated former subsection (b) as (c).

Article 3.

Minor Spouses of Veterans.

§ 165-17. Definition.—For the purposes of this article, the term "veteran" means any person who is entitled to any benefits or rights under the laws of the United States or any rules, regulations or directives issued pursuant thereto by reason of service in the armed forces of the United States during any war in which the United States has engaged. (1945, c. 771.)

§ 165-18. Rights conferred.—(a) Any person under the age of twenty-one years who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the Servicemen's Readjustment Act of one thousand nine hundred and forty-four, or other statutes enacted in the interest of veterans, their families or dependents, and all laws, rules and regulations amendatory or supplemental thereto, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of twenty-one years.

(b) Any person under the age of 21 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing section, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this article, every minor person to whom this article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of twenty-one years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this article, nor disavow any such transaction upon coming of age. (1945, c. 771; 1947, c. 905, ss. 1, 2.)

Article 4.

Copies of Records Concerning Veterans.

§ 165-19. Meaning of "veteran."—For the purpose of this article the term "veteran" shall be given the meaning set forth in § 165-2. (1945, c. 1064.)

§ 165-20. Copies to be furnished by Bureau of Vital Statistics.—Upon application to the Bureau of Vital Statistics by a representative of the North Carolina Veterans Commission, it shall be the duty of the Bureau of Vital Statistics to furnish forthwith to such applicant without charge or fee certified copies of all such vital statistical records or other records, including but not limited to birth certificates and death certificates, concerning any veteran which, in the judgment of such representative of the North Carolina Veterans Commission may be necessary or desirable in order to secure for such veteran, his or her family or dependents, any right or benefit under any federal, State, or local law, rule or regulation relating to veterans: Provided, that the provisions of this section shall be subject to those provisions of chapter forty-eight of the General Statutes which relate to the records in adoption proceedings. (1945, c. 1064.)

Cross Reference.—As to furnishing statistical records to officers of veterans' organizations, see § 130-74.

§ 165-21. Copies to be furnished by registers of deeds.—Upon application to the register of deeds of any county by a representative of the North Carolina Veterans Commission, it shall be the duty of such register of deeds to furnish forthwith to such applicant, without charge or fee, certified copies of any such marriage certificate or any other such official record or document concerning any veteran as in the judgment of such representative of the North Carolina Veterans Commission may be necessary or desirable in order to secure for such veteran, his or her family or dependents any right or benefit under any federal, State or local law, rule or regulation relating to veterans. (1945, c. 1064.)

§ 165-22. Officials relieved of liability for fees.—No official chargeable with the collection of any fee or charge under the laws of the State of North Carolina in connection with his official duties shall be held accountable on his official bond or otherwise for any fee or charge remitted pursuant to the provisions of this article. (1945, c. 1064.)

Article 5.

Veterans' Recreation Authorities.

§ 165-23. Short title.—This article may be referred to as the "Veterans' Recreation Authorities Law." (1945, c. 460, s. 1).

This article is valid, as it is for a public purpose and in the public interest. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

Article Does Not Authorize City to Make Absolute Grant.—The act under which the veterans' recreational center was created does not authorize the city to make an absolute grant of its property upon such terms that in the event the grantee determines the public purpose has failed, or the recreational facilities placed thereon for veterans are not being sufficiently used, the grantee may dispose of the property in its discretion and apply the proceeds to such charity as it may elect. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

§ 165-24. Finding and declaration of necessity.—It is hereby declared that conditions resulting from the concentration in various cities and towns of the State having a population of more than one hundred thousand inhabitants of persons serving in the armed forces in connection with the present war, or who after having served in the armed services during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. (1945, c. 460, s. 2.)

§ **165-25. Definitions.**—The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "recreation authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than one hundred thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(4) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this article.

(5) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(6) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(7) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of any of them.

(8) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(9) "State" shall mean the State of North Carolina.

(10) "Veteran" shall include every person who has enlisted or who has been inducted, warranted or commissioned, and who served honorably in active duty in the military or naval service of the United States at any time, and who is honorably separated or discharged from such service, or who, at the time of making use of the facilities, is still in active service, or has been retired, or who has been furloughed to a reserve. This definition shall be liberally construed, with a view completely to effectuate the purpose and intent of this article.

(11) "Veterans' recreation project" shall include all real and personal property, buildings and improvements, offices and facilities acquired or constructed, or to be acquired or constructed, pursuant to a single plan or undertaking to provide recreation facilities for veterans in concentrated centers of population. The term "veterans' recreation project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith. (1945, c. 460, s. 3.)

§ **165-26. Creation of authority.**—If the council of any city in the State having a population of more than one hundred thousand, according to the last federal census, shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate veterans' recreation facilities and accommodations from the operations of public or private enterprises in the city and surrounding area; and/or

(2) That the public interest requires the construction, maintenance or operation of a veterans' recreation project for the veterans thereof, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding), and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said Commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital): (i) that the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners; (ii) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the recreation authority to become a public body and a body corporate and politic under this article; (iii) the term of office of each of the commissioners; (iv) the name which is proposed for the corporation; and (v) the location and the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each suscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its terriorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1945, c. 460, s. 4.)

§ 165-27. Appointment, qualifications and tenure of commissioners.—An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman.

Of the commissioners who are first appointed, two shall serve for a term of one year, two for a term of three years, and one for a term of five years, and thereafter, the terms of office for all commissioners shall be five years. A commissioner shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for the unexpired term. Vacancies occurring by expiration of office or otherwise shall be filled in the following manner: The mayor and the remaining commissioners shall have a joint session and shall unanimously select the person to fill the vacancy; but if they are unable to do so, then such fact shall be certified to the resident judge of the superior court of the county in which the authority is located, and he shall fill the vacancy. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1945, c. 460, s. 5.)

Local Modification.—City of Charlotte: 1961, c. 303.

§ 165-28. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State, and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

The commissioners shall provide separate recreational centers for persons of the colored and white races, and they may, in the exercise of their discretion, limit the use of recreational centers under their control in whole or in part to veterans of one sex. They shall have the authority to make rules and regulations regarding the use of the recreational centers and other matters and things coming within their jurisdiction.

They shall have the authority to appoint one or more advisory committees consisting of representatives of various veterans' organizations and others and may delegate to such committee or committees authority to execute the policies and programs of activity adopted by the commissioners. (1945, c. 460, s. 6.)

§ 165-29. Interested commissioners or employees.—No commissioner or employee of any authority shall acquire any interest, direct or indirect, in any veterans' recreation project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any such project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any veterans' recreation project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. (1945, c. 460, s. 7.)

§ 165-30. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon such commissioner if mailed to him at his last known address as same appears upon the records of the authority.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioner removed, and the findings thereon. (1945, c. 460, s. 8.)

§ **165-31. Powers of authority.**—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To sue and be sued in any court; to make, use and alter a common seal; to purchase, acquire by devise or bequest, hold and convey real and personal property; to elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations; to make bylaws and regulations consistent with the laws of the State, for its own government and for the due and orderly conduct of its affairs and management of its property; without limiting the generality of the foregoing, to do any and every thing that may be useful and necessary in order to provide recreation for veterans. (1945, c. 460, s. 9.)

§ **165-32. Zoning and building laws.**—All recreation projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the recreation project is situated. (1945, c. 460, s. 10.)

§ **165-33. Tax exemptions.**—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local, municipal and county taxes, and for the purpose of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. (1945, c. 460, s. 11.)

§ **165-34. Reports.**—The authority shall, at least once a year, file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1945, c. 460, s. 12.)

§ **165-35. Exemption from Local Government and County Fiscal Control Acts.**—The authority shall be exempt from the operation and provisions of chapter sixty of the Public Laws of North Carolina of one thousand nine hundred and thirty-one, known as the "Local Government Act," and the amendments thereto, and from chapter one hundred and forty-six of the Public Laws of North Carolina of one thousand nine hundred and twenty-seven, known as the "County Fiscal Control Act" and the amendments thereto. (1945, c. 460, s. 13.)

§ **165-36. Conveyance, lease or transfer of property by a city or county to an authority.**—Any city or county, in order to provide for the construction, reconstruction, improvement, repair or management of any veterans' recreation project, or in order to accomplish any of the purposes of this article, may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority within the territorial boundaries of which such city or county it is wholly or partly located, any real, personal or mixed property, and in connection with any such transaction, the authority involved may accept such lease, transfer, assignment and conveyance, and bind itself to the performance and observation of any agreements and conditions attached thereto. Any city or county may purchase real property and convey or cause same to be conveyed to an authority. (1945, c. 460, s. 14.)

§ **165-37. Contracts, etc., with federal government.**—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any veterans' recreation project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of such a project, to take over, lease or manage any recreation project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases and other agreements which the federal government shall have the right to require. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any veterans' recreation project which the authority is empowered by this article to undertake. (1945, c. 460, s. 15.)

§ **165-38. Article controlling.**—Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling: Provided, that nothing in this article shall prevent any city or municipality from establishing, equipping and operating a veterans' recreation project, or extending recreation facilities under the provisions of its charter or any general law other than this article. (1945, c. 460, s. 17.)

Article 6.

Powers of Attorney.

§ **165-39. Validity of acts of agent performed after death of principal.**—No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. (1945, c. 980, s. 1.)

§ **165-40. Affidavit of agent as to possessing no knowledge of death of principal.**—An affidavit, executed by the attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this State, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. (1945, c. 980, s. 2.)

§ **165-41. Report of "missing" not to constitute revocation.**—No report or listing, either official or otherwise, of "missing" or "missing in action," as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. (1945, c. 980, s. 3.)

§ **165-42. Article not to affect provisions for revocation.**—This article shall not be construed so as to alter or affect any provisions for revocation or termination contained in such power of attorney. (1945, c. 980, s. 4.)

ARTICLE 7.

Miscellaneous Provisions.

Cross References.—As to guardians of children of servicemen, see § 33-67. As to Veterans' Guardianship Act, see chapter 34. As to federal records and reports that person dead, missing, captured, etc., see §§ 8-37.1 through 8-37.3. As to conservators of estates of persons reported missing, captured or interned, see §§ 33-63 through 33-66. As to absentee voting by members of armed forces, see §§ 163-58, 163-70 to 163-77.12. As to registration of official discharges from military and naval forces, see §§ 47-109 to 47-114. As to instruments proved or acknowledged before officers of certain ranks, see §§ 47-2, 47-2.1. As to salary increments for experience to teachers, etc., serving in armed forces, see § 115-151. As to exemption of veterans' pensions from taxation, see § 105-344. As to exemption of veterans from peddlers' license tax, see § 105-53. As to educational advantages for children of veterans, see §§ 116-149 through 116-151. As to furnishing statistical records to veterans' organizations, see § 130-74. As to exemption of property of veterans' organizations from taxation, see §§ 105-296, 105-297. As to exemption of veterans' organizations from tax on billiard and pool tables, see § 105-64. As to pensions for Confederate veterans, widows and servants, see § 112-15 et seq.

§ **165-43. Protecting status of State employees in armed forces, etc.**—Any employee of the State of North Carolina, who has been granted a leave of absence for service in either (i) the armed forces of the United States; or (ii) the merchant marine of the United States; or (iii) outside the continental United States with the Red Cross, shall, upon return to State employment, if reemployed in the same position and if within the time limits set forth in the leave of absence, receive an annual salary of at least (i) the annual salary the employee was receiving at the time such leave was granted; plus (ii) an amount obtained by multiplying the step increment applicable to the employee's classification as provided in the classification and salary plan for State employees by the number of years of such service, counting a fraction of a year as a year; provided that no such employee shall receive a salary in excess of the top of the salary range applicable to the classification to which such employee is assigned upon return. (1945, c. 220.)

§ **165-44. Korean veterans; benefits and privileges.**—All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean conflict" means those persons serving in the armed forces of the United States during the period beginning the 27th of June, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of the Congress. (1953, c. 215.)

Chapter 166.

Civil Defense Agencies.

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166-3. State Civil Defense Agency.
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166-9. Mutual aid agreements.
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166-10. Appropriations and levy of taxes; authority to accept services, gifts, grants and loans.
166-11. Utilization of existing services and facilities.
166-12. Eligibility of civil defense personnel; oath required.
166-13. [Repealed.]

§ **166-1. Short title.**—This chapter may be cited as "North Carolina Civil Defense Act of 1951." (1951, c. 1016, s. 1.)

§ **166-1.1. Policy and purpose.**—(a) Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquake, hurricane, or other natural causes, and in order to insure that preparations of this State will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the State, it is hereby found and declared to be necessary:

(1) To create a State Civil Defense Agency, and to authorize the creation of areas within the State and to create local organizations for civil defense in the political subdivisions of the State;

(2) To confer upon the Governor and upon the executive heads or governing bodies of the political subdivisions of the State the emergency powers provided herein; and

(3) To provide for the rendering of mutual aid among the political subdivisions of the State and with other states and to co-operate with the federal government with respect to the carrying out of civil defense functions.

(b) It is further declared to be the purpose of this chapter and the policy of the State that all civil defense functions of this State be co-ordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective perparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur. (1959, c. 337, s. 1.)

§ **166-2. Definitions.**—As used in this chapter:

(1) "Civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action or by fire, flood, earthquake, windstorm or explosion when so requested by the governing body of any county, city or town in the State. These functions include, without limitation, fire fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons of defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian

protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(2) "Local organization for civil defense" shall mean an organization created in accordance with the provisions of this chapter by State or local authority to perform local civil defense functions.

(3) "Mobile support unit" shall mean an organization for civil defense created in accordance with the provisions of this chapter by State or local authority to be dispatched by the Governor to supplement local organizations for civil defense in a stricken area.

(4) "Political subdivision" shall mean counties and incorporated cities and towns. (1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1.)

Editor's Note.—The 1953 amendment added the part of subdivision (1) appearing after "hostile action" in the first sentence.

The 1955 amendment struck out "or windstorm" in the first sentence and inserted in lieu thereof the words "windstorm or explosion."

§ 166-3. State Civil Defense Agency.—(a) There is hereby created within the executive branch of the State government a department of civil defense (hereinafter called the "Civil Defense Agency") and a Director of Civil Defense (hereinafter called "Director") who shall be the head thereof and shall be a full time administrative officer appointed by the Governor. He shall hold office during the pleasure of the Governor and his salary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

(b) The Director may employ such technical, clerical, stenographic and other personnel and may make such expenditures within the appropriation therefor.

(c) The Director and other personnel of the Civil Defense Agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for personnel of other State agencies.

(d) The Director, subject to the direction and control of the Governor, shall be the administrative officer of the Civil Defense Agency and the State Disaster Coordinator and shall be responsible to the Governor for carrying out the program for civil defense of this State. He shall co-ordinate the activities of all organizations for civil defense within the State, and shall maintain liaison with and co-operate with civil defense agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the Governor. (1951, c. 1016, s. 3; 1959, c. 337, s. 2.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 166-4. Civil Defense Advisory Council.—There is hereby created a Civil Defense Advisory Council (hereinafter called the "Council"), the members of which shall consist of all of those individuals designated as chiefs of service in the basic plan and amendments to the Operational Survival Plan of the North Carolina Civil Defense Agency. The Council shall advise the Governor and Director on all matters pertaining to civil defense when requested. The Governor shall serve as chairman of Council, and all members thereof serve without compensation. (1951, c. 1016, s. 3; 1953, c. 1099, s. 2; 1957, c. 541, s. 20; c. 950, s. 1; 1959, c. 337, s. 3.)

Editor's Note.—The 1959 amendment rewrote this section as changed by the 1953 and 1957 amendments. It formerly related to the Director of Civil Defense and other personnel.

§ 166-5. Civil defense powers of the Governor.—(a) The Governor shall have general direction and control of the Civil Defense Agency and shall be responsible for the carrying out of the provisions of this chapter and, in the event of disaster or the threat of disaster beyond local control or when requested by the governing body of any county, city or town in the State, may assume direct operational control over all or any part of the civil defense functions within this State.

(b) In performing his duties under this chapter and to effect its policy and purpose, the Governor is authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government, which rules and regulations shall be available to the public generally at the office of the clerk of the superior court in each county and in each local civil defense office.

(2) To prepare a comprehensive plan and program for the civil defense of this State, such plan and program to be integrated into and co-ordinated with the civil defense plans of the federal government and of other states to the fullest possible extent, and to co-ordinate the preparations of plans and programs for civil defense by the political subdivisions of this State, such plans to be integrated into and co-ordinated with the civil defense plan and program of this State to the fullest possible extent, within the provisions of this chapter.

(3) In accordance with such plan and program for the civil defense of this State, to ascertain the requirements of the State or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and, within the appropriation therefor, to plan for and procure supplies, medicines, materials, and equipment, and to institute training programs and public information programs, and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

(4) To delegate any administrative authority vested in him under this chapter, and to provide for the sub-delegation of any such authority.

(5) To co-operate and co-ordinate with the President and the heads of the armed forces, the civil defense agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the civil defense of the State and nation.

(6) By and with the consent of the Council of State to make appropriations from the contingency and emergency fund for the purpose of matching federal aid grants for the purposes outlined in this chapter.

(7) On behalf of this State to enter into mutual aid agreements or compacts with other states and with the federal government, either on a State-wide basis or local political subdivision basis, or with a neighboring state. Such mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine and other supplies; engineering services; emergency housing; police services, national or State guards while under the control of this State; health, medical and related services; firefighting, rescue, transportation and construction services and equipment; communications and radiological monitoring services, supplies and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, and other agencies acting under such agreements; and on such terms and conditions as are deemed necessary.

(8) To make such studies and surveys of the industries, resources and facilities in this State as may be necessary to ascertain the capabilities of the State

for civil defense, and to plan for the most efficient emergency use thereof. (1951, c. 1016, s. 3; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3.)

Editor's Note.—The 1953 amendment inserted in subsection (a) the words "or when requested by the governing body of any county, city or town in the State."

The 1955 amendment made subsection (a) also applicable in the event of "the threat of disaster," and deleted the words "due to hostile action" formerly appearing after the words "local control" in that subsection. It also added subdivisions (7) and (8) to subsection (b).

§ **166-6. Emergency powers.**—The provisions of this section shall be operative only during the existence of a state of civil defense emergency (referred to hereinafter in this section as "emergency"). The existence of such emergency may be proclaimed by the Governor, after joint decision of the Governor and the Council of State, or by concurrent resolution of the legislature if the Governor in such proclamation, or the legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions has actually occurred within this State, and that the safety and welfare of the inhabitants of this State require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the legislature of a concurrent resolution terminating such emergency. During such period as such state of emergency exists or continues, the Governor shall have and may exercise the following additional emergency powers:

(1) To enforce all laws, rules, and regulations, relating to civil defense and to assume direct operational control of any or all civil defense forces and helpers in the State.

(2) To sell, lend, lease, give, transfer, or deliver materials or perform services for civil defense purposes on such terms and conditions as may be prescribed for any existing law, and to account to the State Treasurer for any funds received for such property.

(3) To procure, by purchase, condemnation, seizure, or other means, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for civil defense without regard to the limitations of any existing law provided he shall make compensation for the property so seized, taken, or condemned on the following basis:

a. In case property is taken for temporary use, the Governor, within thirty days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

b. If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina, in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award such additional amount, if any, which, when added to the amount so paid to him, shall be just compensation.

(4) To provide for and compel, if deemed necessary, the evacuation of all or

part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of such evacuees.

(5) Subject to the provisions of the State Constitution, to relieve any public officer having administrative responsibilities under this chapter of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this chapter.

(6) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

(7) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules and regulations made pursuant thereto, which officers and agencies shall comply with such direction.

(8) To employ such measures and give such directions to all State departments, commissions, boards, bureaus and other agencies, and to their counterparts in the political subdivisions, as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter or with the findings or recommendations of the above-named agencies by reason of conditions arising from enemy attack or the threat of enemy attack or otherwise.

(9) To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 337, s. 4.)

[In performing his duties under this chapter, the Governor is further authorized and empowered in the event of a declaration of war by the Congress of the United States or when the Governor and Council of State acting together shall find that there is imminent danger of hostile attack upon the State of North Carolina:

(3) To appoint an acting executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission, to serve

   a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
   b. During the continued absence of the regular holder of the office, or
   c. During a vacancy in the office and pending
      1. The selection and qualification of a person to serve for the unexpired term, or
      2. The selection of an acting executive head of the agency by the board or commission authorized to make such selection, and his qualification;

and to determine (after such inquiry as he deems appropriate) that the executive head of such State agency or institution is physically or mentally incapable of performing the duties of his office, and also to determine that such incapacity has terminated.

An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately

   a. Upon the termination of the incapacity of the officer in whose stead he acts,
   b. Upon the return of the officer in whose stead he acts, or
   c. Upon (i) the selection and qualification of a person to serve for the unexpired term, or (ii) the selection of an acting executive

head of the agency or institution by the board or commission authorized to make such selection, and his qualification. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2.)]

Editor's Note.—This section was twice amended by the Session Laws of 1959. Chapter 284 added to the section as changed by the 1955 amendment a new subdivision, to be designated (3). Chapter 337, which did not refer to chapter 284, rewrote the entire section. The section as rewritten by chapter 337 is set out first above. The subdivision added by chapter 284 is then set out in brackets, together with the preliminary paragraph from the section as it stood before its amendment by chapter 337.

Section 3 of chapter 284 provides: "Nothing in this act shall be deemed to repeal G. S. 128-39."

§ **166-7. Mobile support units.**—(a) The Governor or his duly designated representative is authorized to create and establish such number of mobile support units as may be necessary to reinforce civil defense organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each such unit who shall have primary responsibility for the organization, administration and operation of such unit. Mobile support units shall be called to duty upon orders of the Governor and shall perform their functions in any part of the State, or, upon the conditions specified in this section, in other states.

(b) Whenever a mobile support unit of another state shall render aid in this State pursuant to the orders of the Governor of its home state and upon the request of the Governor of this State, this State shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such mobile support unit while rendering such aid, and for all payments for death, disability or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid: Provided, that the laws of such other state contain provisions substantially similar to this section or that provisions to the foregoing effect are embodied in a reciprocal mutual-aid agreement or compact or that the federal government has authorized or agreed to make reimbursement for such mutual aid as above provided.

(c) No personnel of mobile support units of this State shall be ordered by the Governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section or unless the reciprocal mutual-aid agreements or compacts include provisions providing for such reimbursement or unless such reimbursement will be made by the federal government by law or agreement. (1951, c. 1016, s. 5.)

§ **166-8. Local organization for civil defense.**—(a) Each political subdivision of this State is hereby authorized to establish a local organization for civil defense in accordance with the State civil defense plan and program; and it is further provided that in the event that any political subdivision of the State fails to establish such a local organization, and the Governor, in his discretion, determines that a need exists for such a local organization, then the Governor is hereby empowered to establish, or to establish through the Director of Civil Defense, a local organization within said political subdivision. Each local organization for civil defense shall have a director who shall be appointed by the governing body of the political subdivision, who may be paid in the discretion of the governing body of the political subdivision, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such governing body. Civil defense directors appointed by the governing bodies of counties shall co-ordinate the activities of all civil defense organizations within such county, including the activities of civil defense organizations of cities and towns within such counties. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of § 166-10. Counties and municipalities are hereby authorized to make appropriations for the purposes outlined in this section subject to the procedure and limitation established for appropriating municipal funds by the General Statutes.

(b) In carrying out the provisions of this chapter each political subdivision, in which any disaster due to hostile action as described in § 166-2 (a) occurs, or in the event of fire, flood, earthquake or windstorm when the governing body of any such political subdivision shall invoke the provisions of this chapter, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons and property, including emergency asssistance to the victims of any disaster resulting from enemy attack, or fire, flood, earthquake or windstorm, subject to the direct supervision of the governing body of such political subdivision; and to direct and coordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal and State civil defense agencies;

(2) To appoint, employ, remove, or provide, with or without compensation, a civil defense director, air-raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian defense workers;

(3) To establish a primary and one or more secondary control centers to serve as command posts during an emergency;

(4) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty the employees, property, or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for civil defense purposes and within or outside of the physical limits of the subdivision. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5.)

Editor's Note.—The 1953 amendment inserted in the preliminary paragraph of subsection (b) the provision as to "fire, flood, earthquake or windstorm," and the provision relating to the quoted words in subdivision (1) of the subsection. It also inserted in subdivision (2) the words "a civil defense director."

The 1957 amendment added that part of the first sentence appearing after the semicolon.

The 1959 amendment added the reference to counties in the last sentence of subsection (a).

§ **166-8.1. No private liability.**—Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege, or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons or property during an actual, impending, mock or practice attack, shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any person where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes. (1957, c. 950, s. 3.)

§ **166-9. Mutual aid agreements.**—(a) The director of each local organization for civil defense may, in collaboration with other public and private agencies within this State, develop or cause to be developed mutual aid arrangements for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements shall be consistent with the State civil defense plan and program, and in time of emergency it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements.

(b) The director of each local organization for civil defense may, subject to the approval of the Governor, enter into mutual aid arrangements with civil defense agencies or organizations in other states for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. (1951, c. 1016, s. 7.)

§ 166-9.1. Immunity and exemption.—(a) All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof nor other agencies of the State or political subdivision thereof, nor, except in cases of willful misconduct, gross negligence, or bad faith, any civil defense worker complying with or reasonably attempting to comply with this article, or any order, rule, or regulation promulgated pursuant to the provisions of this article, or pursuant to any ordinance relating to blackout, evacuation or other precautionary measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article, or under the Workmen's Compensation Law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

(b) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized civil defense worker who shall, in the course of performing his duties as such, practice such professional, mechanical, or other skill during a civil defense emergency.

(c) As used in this section, the term "civil defense worker" shall include any full or part-time paid, volunteer, or auxiliary employee of this State, or other states, territories, possessions or the District of Columbia, of the federal government, or any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing civil defense services at any place in this State, subject to the order or control of, or pursuant to a request of, the State government or any political subdivision thereof.

(d) Any civil defense worker, as defined in this section, performing civil defense services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance, to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges he would ordinarily possess if performing his duties in the State, province or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4.)

§ 166-10. Appropriations and levy of taxes; authority to accept services, gifts, grants and loans.—(a) The performance by political subdivisions of this State of any or all of the functions authorized by this chapter to be so performed is hereby declared to be for a public purpose, and the expenditure of funds therefor is for a necessary expense and the levy of taxes therefor is for a special purpose. Each political subdivision is hereby authorized, in accordance with the procedure and limitations established for the expenditure of public funds by local units of government by the General Statutes, for the purpose of performing such functions, in addition to all other taxes authorized by law, and each political subdivision may make appropriations and expend funds to perform any or all of such functions or to carry out the purposes of this chapter. In addition thereto, appropriations may be made by political subdivisions, for the purposes above described, immediately following the effective date of this chapter, such appropriations to be made from surplus funds or any other available funds not otherwise appropriated.

(b) Whenever the federal government or any agency or officer thereof shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of civil defense, the State, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer and upon such acceptance the governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm or corporation shall offer to the State or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the State, acting through the Governor, or such political subdivision acting through its governing body, may accept such offer and upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the State or such political subdivision, and subject to the terms of the offer. (1951, c. 1016, s. 8.)

§ **166-11. Utilization of existing services and facilities.**—In carrying out the provisions of this chapter, the Governor is authorized to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the State and of the political subdivisions thereof, and the governing bodies of the political subdivisions of the State are authorized to utilize the services, equipment, supplies and facilities of their respective subdivisions, to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor and to the civil defense organizations of the State upon request. This authority shall extend to all disasters and for civil defense training purposes. (1951, c. 1016, s. 9; 1955, c. 387, s. 5; 1957, c. 950, s. 5.)

Editor's Note.—The 1955 amendment made co-operation by the officers and personnel of State departments, offices and agencies mandatory. It also added the last sentence.

The 1957 amendment rewrote this section.

§ **166-12. Eligibility of civil defense personnel; oath required.**—(a) No person shall be employed or associated in any capacity in any civil defense organization established under this chapter who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or in this State, or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States, or has ever been a member of the Communist Party. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence; and that during such time as I am a member of the State Civil Defense Agency, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this State by force or violence, so help me God."

(b) No person shall be barred from holding office in any capacity under this chapter by reason of the prohibition against double office holding. (1951, c. 1016, s. 10.)

§ **166-13**: Repealed by Session Laws 1955, c. 79.

Chapter 167.

State Civil Air Patrol.

Sec.
167-1. State Civil Air Patrol created; membership, appointment and terms of governing board.
167-2. Status and compensation of members; certain statutes inapplicable; State not liable on contracts, etc.
167-3. Powers of governing board.

§ 167-1. State Civil Air Patrol created; membership, appointment and terms of governing board.—There is hereby created a State agency to be known and designated as "State Civil Air Patrol." The operations of the said State agency shall be governed by a board consisting of six ex officio members and three members appointed by the Governor. The ex officio members shall be as follows:

(1) The Adjutant General of the State of North Carolina, as an additional duty of his office;
(2) The deputy wing commander of the North Carolina Wing of the Civil Air Patrol;
(3) The executive officer of the North Carolina Wing of the Civil Air Patrol;
(4) The adjutant of the North Carolina Wing of the Civil Air Patrol;
(5) The communications officer of the North Carolina Wing of the Civil Air Patrol; and
(6) The co-ordinator of the civil defense of the North Carolina Wing of the Civil Air Patrol.

The chairman of the board shall be ex officio, the wing commander of the North Carolina Wing of the Civil Air Patrol. The members of said board appointed by the Governor shall serve for terms of two years from and after their appointment or until their successors are duly appointed and qualified. The Governor shall fill all vacancies occurring in the appointive members of the said board. The Governor may, however, at his pleasure, remove any member of said board appointed by him. (1953, c. 1231, s. 1.)

§ 167-2. Status and compensation of members; certain statutes inapplicable; State not liable on contracts, etc.—The members of the State Civil Air Patrol, including the members of the governing board thereof, except the Adjutant General, shall serve without compensation and shall not be entitled to any benefits provided by the North Carolina Workmen's Compensation Act as set forth in chapter 97 of the General Statutes, and shall not be entitled to the benefits of the Retirement System of Teachers and State Employees as set forth in chapter 135 of the General Statutes. The provisions of article 39 of chapter 143 of the General Statutes, with respect to tort claims against State departments and agencies, shall not be applicable to the activities of the State Civil Air Patrol, and the State shall not in any manner be liable for injury or damage to any person, firm or corporation by reason of the acts of any of the members or officers thereof. The State shall not in any manner be liable for any of the contracts, debts or obligations of the said organization. The members of the governing board of the State Civil Air Patrol and the members thereof shall not, by reason of such membership, be deemed or considered as State employees. (1953, c. 1231, s. 2.)

§ 167-3. Powers of governing board.—The governing board of the State Civil Air Patrol shall be authorized and empowered:

(1) To make such reasonable rules and regulations as may be necessary for the proper operation of the said agency;
(2) To determine the basis for admission of members and all questions concerning the qualifications of members;
(3) To approve or disapprove within the limitations hereinafter set out, in its discretion, the expenditure of any monies appropriated by this chapter;

(4) To co-ordinate the efforts of the Civil Air Patrol with other defense agencies within the State of North Carolina;

(5) To acquire without liability therefor by the State of North Carolina, to be furnished to the North Carolina Wing of the Civil Air Patrol on a loan basis both radio communications and radar equipment to be used as a supplement to such equipment as may now or hereafter be owned by the North Carolina Wing of the Civil Air Patrol or any members thereof;

(6) To have all other powers which may be reasonably implied from the granting of express powers herein, together with such other powers as may be incident to or necessary for the carrying out and the performance of the powers and duties herein given to said board. (1953, c. 1231, s. 3.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

April 1, 1964

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON

Attorney General of North Carolina

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